

In The Matter Of:

BROOKLINE ZONING BOARD APPEALS HEARING

PROCEEDINGS - Vol. 2

February 24, 2014

MERRILL CORPORATION

Legalink, Inc.

101 Arch Street
3rd Floor
Boston, MA 02110
Phone: 617.542.0039
Fax: 617.542.2119

Brookline Zoning Board Appeals Hearing

Case Number 20130094

40B Application by Chestnut Hill Realty

The Residences of South Brookline

February 24, 2014 at 7:00 p.m.

Office of Town Counsel

333 Washington Street, 6th floor

Brookline, Massachusetts 02445

Reporter: Kristen C. Krakofsky

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1 Appearances
2 Board Members
3 Jessie Geller, Chairman
4 Jonathan Book
5 Chris Hussey
6 Mark Zuroff, Associate Member
7 Avi Liss, Associate Member
8 Samuel Nagler, Esquire, Krokidas & Bluestein
9 Edith M. Netter, Esquire,
10 Edith M. Netter & Associates, P.C.
11 Alison Steinfeld,
12 Planning & Community Development Director
13 Steven Schwartz, Esquire, Goulston & Storrs
14 Irene Scharf, 250 Russett Road
15 Steven Chiumenti, Town Meeting Member, Precinct 16
16 Jay Talerman, Esquire, Blatman, Bobrowski & Mead
17 Scott Gladstone, 383 Russett Road
18 William Verrill, 45 Asheville Road
19 Anthony Abner, 265 Russett Road
20 Ed Coppinger, State Representative
21 Nancy Daly, Member of the Board of Selectmen
22 Louisa Jonas, Town meeting Member, Precinct 16
23 Judi Leichtner, Town meeting Member, Precinct 16
24 Robin Koocher, 285 Beverly Road

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1 PROCEEDINGS
2 7:01 p.m.
3 MR. GELLER: Good evening, everybody. This is
4 continued case number 2013009, 40B application at the
5 Residences of South Brookline.
6 My name is Jessie Geller. To my left is Mark
7 Zuroff, to my immediate left -- to my following left is
8 Chris Hussey, Jonathan Book, and Avi Liss.
9 A few administrative details that I want to
10 run through before we get to some testimony tonight.
11 First, on January 24th we conducted -- we, the Board,
12 and there were also interested other parties -- we
13 conducted, on an exceedingly cold day, a site visit and
14 I want to thank Chestnut Hill Realty for allowing us to
15 walk the site and providing hot coffee on that day.
16 We also -- have there been -- Allison? Is she
17 here?
18 UNIDENTIFIED: I think she's at the door.
19 MR. GELLER: She's at the door. All right.
20 We'll move on from that.
21 UNIDENTIFIED: She's coming now.
22 MR. GELLER. Allison, have we -- where are we
23 in terms of working sessions? Is anything --
24 MS. STEINFELD: No.

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1 MR. GELLER: Nothing. Okay. Thank you.
2 MS. STEINFELD: Nothing yet.
3 MR. GELLER: Nothing yet. Okay.
4 Next issue. Mr. Hussey?
5 MR. HUSSEY: How are the architectural
6 consultants coming?
7 MR. GELLER: Well, let's have a brief
8 discussion. So the issue -- let me back up from your
9 question. The question that is raised is -- we've
10 obviously all looked at the comments that we've
11 received in written fashion and it seems to be that
12 there is questions about the design. You're the
13 architect sitting and you, I believe at the prior
14 hearing, had raised a question about design and what
15 level of review and we did talk briefly, I believe,
16 about the two basic alternatives. One is peer review,
17 versus engagement of a consultant.
18 MR. HUSSEY: We talked at some length about it
19 and agreed that the Town would hire architectural
20 consultants. They would not hire peer review. There
21 was no need to duplicate it.
22 MR. GELLER: Okay. My understanding is that
23 is not taking place.
24 MR. HUSSEY: The hiring --

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1 MR. GELLER: The hiring of the consultant.
2 Therefore, the question for the Board's
3 consideration -- and when I say the Board's
4 consideration, one, two, three -- is engagement of a
5 professional for peer review, design review.
6 MR. HUSSEY: That's the only alternative, I
7 gather.
8 MR. GELLER: I think it is.
9 MR. HUSSEY: Although, I'm a little curious,
10 if we couldn't get architectural consultants which
11 would be a simpler process, are we sure we're going to
12 be able to get someone to do peer review?
13 MR. GELLER: I don't -- at the end of the day,
14 do I know the answer to the question? I do not. Our
15 mission would be to delegate that authority and to see
16 if it could be accomplished. It think it's
17 appropriate, I think it's necessary. So otherwise,
18 we're operating in a vacuum.
19 MR. HUSSEY: Do you want me to make a motion?
20 MR. GELLER: No. I want the Board to discuss.
21 Mr. Book, got any thought on this or are you --
22 MR. BOOK: No. I think that we need -- I'm
23 not an architect. I'm not in a position to evaluate
24 the design of the project from a -- not only an

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1 aesthetic perspective but, you know, those aspects that
 2 an architect would focus on. I think we need somebody
 3 with expertise to help us -- or to help me.
 4 MR. GELLER: Okay. Is Mr. Schwartz here?
 5 MR. SCHWARTZ: Yes.
 6 MR. GELLER: Mr. Schwartz, the Board would
 7 like to officially request review on design. Will you
 8 reply and pay for it?
 9 MR. SCHWARTZ: Can I approach the microphone?
 10 MR. GELLER: Certainly.
 11 MR. SCHWARTZ: I'd like to have an opportunity
 12 to discuss that with my client. But I will tell you,
 13 in my experience in 40B projects, that's not topical.
 14 Design is inherently a subjective matter. If the
 15 Board -- typically if a board wants advice on design,
 16 it either looks to its own planning staff. If it
 17 chooses to hire its own consultant, that, of course, is
 18 its prerogative.
 19 My experience is a peer review is typically
 20 done for things such as civil engineering, traffic,
 21 things that are really much more quantifiable where
 22 there is accepted standards rather than design.
 23 MR. GELLER: Okay. Let me just jump to one
 24 more topic. Let me introduce -- the ZBA/Town has

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1 engaged the services of Edie Netter as a part of -- NHP
 2 operates the program. It is a state-funded program.
 3 Edie will assist us -- "us" being the Board and, I
 4 guess, the Town -- with the 40B process and through the
 5 40B process.
 6 Did you want to -- do you have a comment about
 7 this?
 8 MS. NETTER: I think it's really something we
 9 need to debate. We certainly have the authority to
 10 request this review. Is it done all the time? No. Is
 11 it done when a community thinks that design is a key
 12 issue? Yes. The only question is -- of the
 13 applicant -- if they agree to pay for the services or
 14 not. So that's the short story.
 15 MR. GELLER: Thank you. Mr. Schwartz, do you
 16 want to take a moment to speak to your client?
 17 MR. SCHWARTZ: Just to be clear, we have no
 18 quarrel with that. That's within the Board's
 19 prerogative to hire a consultant to look at design
 20 issues. We'll decline, respectfully, to pay for it.
 21 MR. GELLER: Why don't I ask right now for a
 22 vote on whether or not we officially request the
 23 applicant to pay for design.
 24 All in favor?

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1 So that's unanimous. Thank you.
 2 The next item I want to talk about is, we had
 3 reviewed, briefly, at the last hearing an agenda and I
 4 think everyone is pretty much aware the last hearing
 5 was snowed out, so we didn't get much accomplished
 6 other than the Board sitting here and saying
 7 "continued."
 8 So my expectation is that this evening will be
 9 fairly long, although one of the board members is a
 10 little under the weather tonight, so we're going to
 11 take periodic short breaks and we'll try to keep things
 12 to a reasonable hour this evening.
 13 In terms of scheduled dates, we have this
 14 evening for the public to speak and if we have more
 15 speakers than time, we will, of course, carry over to
 16 the next scheduled hearing date which is March 5th,
 17 same time, 7:00.
 18 Right now on our agenda we have tonight, March
 19 5th. We had proposed March 26th. Assuming we work
 20 lock step and everything's an efficient process, March
 21 26th we would change to a date to focus on elements
 22 about the site and of building design. That would be
 23 an opportunity for peer review. We would peg -- more
 24 or less -- these dates are not fixed. I caution

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1 people, these dates are not fixed -- April 10th,
 2 roughly, for traffic and public safety as a dedicated
 3 hearing and then May 8th as a dedicated hearing to
 4 drainage and stormwater.
 5 Now, what's realistically going to happen is,
 6 given the interest in the case, we probably are going
 7 to wind up rolling over dates and having to add other
 8 dates but I wanted to give you a rough sense of the
 9 immediate schedule.
 10 MR. HUSSEY: Mr. Chairman?
 11 MR. GELLER: Yes.
 12 MR. HUSSEY: We were going to hear reports
 13 from the town boards and commissions. That was on the
 14 27th of February, actually. Testimony by town boards,
 15 commissions, and departments.
 16 MR. GELLER: On the most recent iteration,
 17 it's March 5th, and then site design is the 26th, then
 18 April 10th?
 19 MR. HUSSEY: Oh, okay.
 20 MR. GELLER: Again, the dates -- obviously, if
 21 we require two hearings for the public, then we have to
 22 push everything back. We'll have to add a date.
 23 So I'm advised by our consultant that we
 24 actually need to take a vote on -- if the applicant

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1 does not pay for peer review, whether the Town should
 2 pay for the cost. We're absolutely determined that we
 3 want peer review and if necessary, it will be at the
 4 Town's costs. I'm in favor. I think we need it.
 5 And is Allison back in the room? Allison, I'd
 6 like to delegate authority to the Planning Department
 7 to put out bids and get names and engage someone for
 8 the ZBA.
 9 MS. STEINFELD: Be happy to do so.
 10 MR. HUSSEY: Will we set a deadline as to when
 11 we need that report by because you mentioned it, I
 12 think. One of these dates you --
 13 MR. GELLER: The 26th is the target.
 14 MR. HUSSEY: The 26th of March?
 15 MR. GELLER: March 5th. The 26th of February.
 16 MR. HUSSEY: March may be too soon, but let's
 17 see.
 18 MR. GELLER: March 13th is no longer a
 19 scheduled date. Okay?
 20 Okay. Let me move on with tonight. So on our
 21 schedule for tonight is an opportunity for the public
 22 to provide us with information. I would ask a few
 23 things. My understanding is there are a lot of people
 24 who want to speak, so I would ask the following:

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1 Listen to what other people have to say, and
 2 be courteous of what other people have to say. There
 3 may be information that is given by somebody before you
 4 that you agree with. If that's the case -- we have a
 5 lot of people who want to speak -- please don't
 6 necessarily repeat it. Simply point to that other
 7 person and say, I agree with them. I don't care how
 8 many of you want to say that phrase, but obviously we
 9 want to make sure that everybody has an opportunity to
 10 speak.
 11 When you speak there is -- speaking to the
 12 podium to my left, there is a microphone there. Start
 13 by giving us your name and your address. Speak loudly
 14 and clearly so we can hear you, be aware that our
 15 stenographer may stop you and ask you how to spell your
 16 name and you can give them the information.
 17 One last disclosure I want to make --
 18 Mr. Gladstone are you speaking tonight?
 19 MR. GLADSTONE: Yes.
 20 MR. GELLER: Okay. Just by way of disclosure,
 21 Mr. Gladstone and I serve on a common board together
 22 and I was his camp counselor.
 23 Has a sign-up sheet been circulated?
 24 (No response.)

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1 Just in terms of a show of hands, how many
 2 people plan on speaking?
 3 Okay. So what I would propose to do is, if
 4 you wish to speak -- has an order been set by people?
 5 Do they know -- is there a process that you've all
 6 agreed upon?
 7 MS. SCHARF: At least the first several.
 8 MR. GELLER: Okay. What we'll do is, we'll do
 9 it in your order, however you'd like to do the
 10 presentation. Once we get beyond that, if people want
 11 to line up on the side, which is what we ordinarily do,
 12 and they can approach and speak into the microphone and
 13 we'll hear you as you go. And I think, again, we'll
 14 try and take very brief breaks periodically. So unless
 15 there are other administrative details, who's going
 16 first?
 17 MS. SCHARF: Good evening. My name is Irene
 18 Scharf, and I live at 250 Russet Road. I want to thank
 19 the chairman, the members of the Board. Thank you for
 20 taking -- for the attention that you're giving to the
 21 concerns of the community over this proposal. Along
 22 with Steve Chiumenti, I'm going to be presenting on
 23 behalf of Preserve Brookline and I and he are town
 24 meeting members from Precinct 16 and we're both

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1 abutters.
 2 We would like to join with the Board of
 3 Selectmen, the Preservation Commission, the School
 4 Committee, the Planning Department, the Planning Board,
 5 the Neighborhood Conservation District Commission,
 6 Brookline GreenSpace Alliance, the DPW, the Fire
 7 Department, the Police Department, and the Health
 8 Department in expressing our most serious concerns
 9 about the inappropriateness of this project and the
 10 adverse impact it will have, not just on the current
 11 residents of Hancock Village and the adjoining
 12 neighborhoods, but also on all of Brookline.
 13 Now, we know that the history of this property
 14 is not part of the criteria for your decision, but as
 15 the developer spent considerable time during it's
 16 presentation last month describing their recollection
 17 of the history here, we feel it important to take a few
 18 minutes to respond to and set the record straight.
 19 So I hope that our PowerPoint presentation
 20 will help you follow along. I'm going to be adding a
 21 few things here and there but essentially, if you can
 22 read this, that should be really helpful.
 23 So I'm going to be giving the original -- the
 24 initial part of our conversation, setting the record

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1 straight, and then Steve is going to speak about the
 2 current 40B proposal to Hancock Village, it's negative
 3 impact, and then Attorney Jay Talerman is going to be
 4 speaking about the legal barriers to the 40B proposal.
 5 So a little relevant history on Hancock
 6 Village and recent attempts to massively expand it. It
 7 was built in 1946 on a former golf course to provide
 8 affordable housing for returning World War II veterans.
 9 The zoning changes were made by town meeting in
 10 Brookline explicitly in exchange for limitations on
 11 future development. Limitations were binding on future
 12 owners, and they are not governed by the 30-year time
 13 established by Mass law for deed restrictions.
 14 The restrictions of the future development
 15 that were agreed to between the original developer and
 16 the Town of Brookline include the townhouse-style
 17 buildings, that no more than 20 percent of the area
 18 should be covered by buildings, that the buildings
 19 should not be more than two and a half stories high,
 20 and that the abutting green space, integral to Hancock
 21 Village's design, should be set aside as a buffer and
 22 public space shared by all of the Hancock Village
 23 residents.
 24 So 60 years later, Hancock Village remains the

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1 largest development in Brookline, 530 units, 843
 2 bedrooms, and it is one of the best preserved examples
 3 of the garden village style and has been declared
 4 eligible for inclusion in the National Registry of
 5 History Places.
 6 In 1986 Hancock Village was purchased by
 7 Chestnut Hill Realty, the developer. And in 1994 and
 8 1995 when rent control was terminated and Brookline
 9 would no longer insist that the developer retain units
 10 as affordable, Chestnut Hill Realty eliminated all of
 11 the affordable housing at Hancock Village making all
 12 530 formerly rent-controlled units market rate. By its
 13 choice, Chestnut Hill Realty thus eliminated most
 14 designated affordable housing in South Brookline. The
 15 loss of these 530 affordable units entirely accounts
 16 for the deficit in affordable units now faced by
 17 Brookline, making it subject to 40B development.
 18 So in 2009 Chestnut Hill Realty announced its
 19 intention to massively expand Hancock Village, and
 20 between 2009 and 2011 the Selectmen created a town-wide
 21 Hancock Village planning committee which discussed
 22 expansion plans with Chestnut Hill Realty, Brookline
 23 residents, and representatives of the relevant town
 24 departments.

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1 For two and a half years, Chestnut Hill Realty
 2 did little to respond to the committee's concerns about
 3 the scope and impact of the proposed development which
 4 included maximum buildouts to 466 units, paving over
 5 most of the green space buffer, including large
 6 incongruous structures, and having a large negative
 7 budgetary impact on Brookline.
 8 So this is -- I believe this is a schematic
 9 taken from Chestnut Hill Realty's plans on the left and
 10 there are 466 units proposed, there were 673 new
 11 parking spaces proposed. Among the buildings, the
 12 tallest was seven stories, the green space was replaced
 13 by parking.
 14 So this area here, if you see my little thing,
 15 so this is the green space following my little arrow
 16 and it goes across Independence and up Beverly and that
 17 was all to be built on in the 2009 proposal and this is
 18 the proposed seven-story building.
 19 So in 2011, the Hancock Village Neighborhood
 20 Conservation District was established after extensive
 21 review and more than 80 percent majority of town
 22 meeting. The design guidelines preserve and protect
 23 the original character of this historic site by
 24 mirroring the 1946 agreement. Building permits require

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1 approval of the Hancock Village Neighborhood
 2 Conservation District Committee based on the design
 3 guidelines.
 4 So now I'd like to help clarify some
 5 statements made during the developer's presentation to
 6 you all last month.
 7 The claim was that Hancock Village was built
 8 as housing for returning World War II vets and that its
 9 proposal is a response to the need for affordable
 10 housing in South Brookline.
 11 Actually, Hancock Village was built as
 12 affordable housing for returning World War II vets.
 13 All the units were affordable until Chestnut Hill
 14 Realty converted them all to market-rate units in
 15 1990. Their actions have created the issue that they
 16 now claim to seek to remedy.
 17 They claim that the restrictions placed on
 18 future development at Hancock Village in 1946 are no
 19 longer binding. They used a 2010 quote from a previous
 20 Brookline town counsel to support their claim.
 21 Our response -- and there will be further
 22 discussion of this by Attorney Talerman shortly -- the
 23 2010 quote could not consider a 2011 case, Killorin
 24 (phonetic) vs. ZBA at Andover, which has implications

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1 for agreements made as part of contract zoning. And
 2 the enforceability of the restriction is one of the
 3 components of an ongoing lawsuit between Brookline and
 4 the developer.
 5 Statement: Hancock Village is the least dense
 6 project in Brookline.
 7 Actually, Hancock Village is the largest
 8 development in Brookline's history. The density of
 9 Hancock Village doubles the density of the existing
 10 neighborhood. Parts of the proposed development will
 11 be three to four times the density of the existing
 12 neighborhood.
 13 Claim: Chestnut Hill Realty claims that it is
 14 the one who established the current landscaping.
 15 Actually, the landscape design at Hancock
 16 Village in the 1940s was done by Olmstead Associates
 17 which worked with a noted developer of garden village
 18 architecture to produce an integrated design that
 19 exemplifies this design ecosystem.
 20 Claim was made that Chestnut Hill Realty will
 21 do their best to preserve mature trees. And I
 22 appreciate that you mentioned that you were recently on
 23 a site visit.
 24 Actually, nearly all -- this current proposal

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1 destroys nearly all of the exiting trees as was clear
 2 during the site walk, as I've been told, where nearly
 3 every tree was marked -- every mature tree was marked
 4 with a yellow ribbon for destruction. Here are the
 5 yellow arrows showing you the yellow ribbons around the
 6 trees that are some of the trees that are going to be
 7 destroyed.
 8 Chestnut Hill Realty claims that the Hancock
 9 Village Planning Committee did not work with it to find
 10 an acceptable plan.
 11 There will be further discussion of this
 12 comment by Scott Gladstone but just preliminarily, the
 13 Hancock Village Planning Committee, made up of
 14 representatives of the entire town, met multiple times
 15 with Chestnut Hill Realty over two and a half years.
 16 The concern was the scale and site of the proposed
 17 development and its impact on the Town's finances.
 18 These concerns were not mitigated by any of Chestnut
 19 Hill Realty's responses. Actually, to add, the
 20 developer also stated to you all a month ago that the
 21 committee made no suggestions.
 22 On the contrary, the committee made many
 23 suggestions that would have enabled the developer to
 24 make a profit but that would not have had the adverse

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1 impact on the town that the current proposal does.
 2 Claim: The NCD was created without any input
 3 from the town boards.
 4 Actually, the NCD warrant article was
 5 discussed exhaustively by a number of committees and
 6 boards including the Advisory Committee, the Planning
 7 Board, the Preservation Commission, EDAD, the
 8 Conservation Commission, Selectmen, as well as other
 9 town groups. There were meetings about the NCD by the
 10 Town Meeting Members Association, the Brookline
 11 Neighborhood Association, PAX, the GreenSpace Alliance,
 12 the North Brookline Neighbor Association, and the South
 13 Brookline Neighborhood Association. All of them fully
 14 endorsed the creation of the NCD. And as I mentioned,
 15 the NCD warrant article was approved by over 80 percent
 16 of town meeting members as well as by the
 17 Mass. Attorney General.
 18 Once established, the NCD Commission invited
 19 Chestnut Hill Realty to discuss potential development
 20 proposals. Chestnut Hill Realty did not respond.
 21 So in summary, Hancock Village was established
 22 as affordable housing and the developer is responsible
 23 for its conversion to market-rate houses. And finally,
 24 restrictions on the future development of Hancock

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1 Village may preclude this 40B proposal.
 2 So now to give a little bit of background on
 3 the 40B proposal to expand Hancock Village. We're
 4 calling them 40B1 and 40B2.
 5 40B1 was filed in August of 2012 when Chestnut
 6 Hill Realty submitted a 40B eligibility proposal to
 7 MassDevelopment. This included 271 units, 440
 8 bedrooms, parking for 446 new cars, the tallest
 9 building of five stories, and the green space replaced
 10 by parking and buildings.
 11 Now, I'll do a little pointing here to try to
 12 show you some of those aspects. This is what is now
 13 the green space, the yellow, through here on Russet and
 14 then you make a right on Independence and a left up
 15 Beverly. And that's the green space, and that's where
 16 all the building and parking lots and parking garages
 17 are going to be, and this is the five-story building.
 18 2013 -- February 13th of 2013, MassDevelopment
 19 prepared a letter and signed it which stated,
 20 "MassDevelopment has determined that the conceptual
 21 site plan is not generally appropriate for the site due
 22 to the complete elimination of the existing green belt
 23 buffer, inadequate setbacks, and the massing of a
 24 project proposed five-story building which is generally

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1 inappropriate for the site."
 2 We want you to know that it required for a
 3 request to MassDevelopment to unearth the existence of
 4 this letter, and I do mean "unearth." MassDevelopment
 5 has been only marginally responsive to requests for
 6 transparency providing often useless copies of our own
 7 and the Town decisions and newspaper articles rather
 8 than the documents requested, only responding, really,
 9 when threatened with resort to various state
 10 authorities.
 11 Mysteriously, on February 15, 2013 Chestnut
 12 Hill Realty withdrew its 40B proposal prior to
 13 MassDevelopment sending this prepared denial letter.
 14 At this past January meeting, the developer
 15 stated that it withdrew the proposal in order to
 16 respond to the community input.
 17 Actually, a letter to this Board earlier this
 18 month -- a letter by an abutter, I believe, was sent to
 19 you all earlier this month from an abutter and she
 20 described the contradiction between the developer's
 21 claimed reasons for withdrawing the proposal, quote, to
 22 respond to community concern. And the reason he gave
 23 the judge at the November 25th hearing, essentially it
 24 was withdrawn in response to an expected denial.

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1 And this mirrors experiences that we have had
 2 over the last five years, as my fellow neighbor
 3 mentioned to you, I believe. Just one of many examples
 4 of the developer portraying interactions with the
 5 community in a far more positive light than has been
 6 our experience.
 7 So after that withdrawal in June of 2013,
 8 Chestnut Hill Realty submitted a revised proposal.
 9 The units, 192, only 39 of which will be affordable,
 10 402 bedrooms, parking for 342 new cars, the tallest
 11 building being four stories, and the green space, as
 12 you can see here, essentially turned into parking lots,
 13 roads, and buildings.
 14 Changes between the 2012 -- or what we're
 15 calling 40B1 and 40B2 -- I think if I go like this,
 16 yes, essentially this is a graph that shows the
 17 difference in units, bedrooms, floor area, and parking
 18 but most importantly, we wanted you to note there is an
 19 only 8 percent reduction in the number of bedrooms.
 20 And if you look to this beautiful graph -- I
 21 can say that because I prepared it -- the 2012 proposal
 22 is indicated on the left where you see most of the
 23 apartments are one and two bedrooms with just a
 24 couple -- a few are three bedrooms.

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1 The 2013 proposal on the right, there are
 2 fewer one bedrooms, fewer two bedrooms, and between the
 3 three and four bedrooms, 196 additional bedrooms. The
 4 three and four bedroom apartments equal 65 new
 5 three-bedroom houses.
 6 And this graph at the bottom might also help
 7 you compare the 2012 with the 2013 proposal.
 8 Essentially, the green belt becomes a road with 10
 9 buildings in 2012 but in 2013 it's actually 12
 10 buildings and a road. And the apartment building is --
 11 instead of seven stories, it's six stories, four
 12 residential and two parking.
 13 So here's the 2013 versus the 2012 proposal.
 14 The 2012 is in red and the 2013 is in blue and you'll
 15 note that this one raises, actually, more concern. The
 16 road is closer to the abutter and there was extensive
 17 regrading included in this proposal, hundreds of feet
 18 of retaining wall to be built on the Beverly side, four
 19 to seven feet tall along that edge of the property.
 20 And actually, this newest proposal eliminates more
 21 green space than proposal one and two.
 22 So the 2013 versus 2012 proposal, in terms of
 23 it supposedly being more responsive to the community,
 24 retained the massive incongruous apartment buildings,

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1 destroys the green belt with buildings and roads, and
 2 still maintains inadequate setbacks between the
 3 property and the abutters and actually adds extensive
 4 earth moving that will create water issues -- are sure
 5 to create water issues of significant dimensions.
 6 On October 8th of 2013, despite lack of
 7 significant changes to address the original concerns
 8 that MassDevelopment had and new concerns that proposal
 9 2 raised, MassDevelopment approved the revised proposal
 10 without conditions.
 11 And on November 19th the Town of Brookline and
 12 neighbors sued MassDevelopment, which lawsuit is still
 13 pending in Superior Court.
 14 Now Steven is going to talk with you about the
 15 negative impacts of the current proposal.
 16 MR. CHIUMENTI: My name is Steve Chiumenti,
 17 town meeting member of Precinct 16, and actually, we've
 18 been through most of the material here, so we can go
 19 quicker, I think.
 20 Essentially, this is really a look at the
 21 current proposal in the context of the standards and
 22 the regulations. Really I'm doing pretty much what
 23 MassDevelopment should have done under its own
 24 regulations given the particular proposal that it's

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1 facing. This is the -- essentially the summary of the
 2 regulation itself, what they should have been looking
 3 at. Essentially, that they're to determine preliminary
 4 eligibility -- so-called preliminary eligibility --
 5 considering those factors, the conceptual site plan,
 6 building massing, topography, environmental resources,
 7 and the integration of the plan to the existing
 8 development pattern. So those are the focus of the
 9 aspects of the plan that we're going to look at for a
 10 few moments. And they're supposed to publish their
 11 discussion with supporting reasoning set forth in
 12 reasonable detail.

13 Now, this vaguely describes their rejection
 14 from the first proposal. It has nothing to do with
 15 really their approval in the second proposal, as we'll
 16 see. This is the plan that you noticed before, the red
 17 buildings, the black, the additional pavement on the
 18 green space. I regret that in these pictures they
 19 grade out so much of even Hancock Village because even
 20 compared to Hancock Village the density of this thing
 21 is startling, as you'll see from more of the pictures
 22 in a moment.

23 Essentially, the west side is the part --
 24 Beverly Road part to the west of Independence Drive,

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1 and the east is referred to the part behind Russett
 2 Road on the right.

3 Looking at the Beverly Road part, the point is
 4 these buildings, which are two and a half stories but
 5 really taller than that -- we'll get into that.
 6 Essentially, the buildings themselves are bigger than
 7 an entire two lots for a normal single-family home.
 8 They're supposed to integrate into the plans of the
 9 project. Essentially, it's twice the width of the lot,
 10 and each one of these is really almost four stories --
 11 houses wide -- at least three. And essentially, the
 12 floor space in those buildings, they're like basically
 13 four single-family homes.

14 Now, focusing on the east side of the project,
 15 the Russet Road side, and in particular the box that
 16 focuses on -- I call it "the tower" because it's still
 17 seven stories tall, which we'll discuss in a second
 18 here. This building is -- I mean, compared to the
 19 single-family homes and even compared to existing
 20 Hancock Village the building is, even from this plan
 21 view, gigantic. Essentially, it's about -- the number
 22 of apartments crammed into this thing is about the size
 23 of 100 average homes all stuck in that spot. It's
 24 about triple the density of the existing single-family

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1 principle given the density of those apartments.
 2 Now, this is an image from Chestnut Hill
 3 Realty, and it's looking from the west side to the east
 4 for a good reason. But even in this you can see how
 5 massive this tower is compared to Chestnut Hill
 6 Village, never mind even the single-family homes.

7 The reason this thing is taken from this angle
 8 is basically the hill goes up from east to west and
 9 we're looking from the west to the east. So in this
 10 view, the tower -- its height is minimized compared to
 11 the surrounding buildings. On the other side of that
 12 building the ground slopes down. This is actually a
 13 profile view really looking from -- essentially, it's
 14 the west on the left, to the east on the right. And
 15 what it shows you is that that building is built into a
 16 hillside and so basically from the west side you've got
 17 that -- the imposing look you saw from the other image
 18 giving you no clue of what that would look like from
 19 this side of their own property -- the Hancock Village
 20 property to the east. This actually is also the level
 21 of Russett Road, so a person standing there is going to
 22 be looking up essentially a seven-story height. I'll
 23 show you that in a second.

24 This is a photograph -- now, I suspect many of

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1 you were on that site visit and you were standing on
 2 the hillside here. This is the road that enters the
 3 property and Joe Geller had said that this basically
 4 would be the first level of the tower, that we were
 5 standing on the first level of the tower because there
 6 were going to be two underground levels for parking and
 7 that they were going to be built into the hillside.

8 This photograph was taken from about -- well,
 9 the second story of an abutter, me, actually, with a
 10 camera. It was sitting on a tripod and I used a bubble
 11 level to level the camera. It's essentially
 12 equidistant from this point to the distance of that
 13 road. So this, basically, is a horizontal -- a horizon
 14 connecting these points. And you can see that, in
 15 fact, the base of that road, which is the first level
 16 of this tower, is the peak of the roof of the buildings
 17 to the east. So in effect, this is at two and a half
 18 stories, compared to someone standing on the ground
 19 here or on Russett Road and the building is going to --
 20 the new shorter building is still going to go up four
 21 and a half stories from here -- four stories plus its
 22 roof. So from this -- relative from this ground plane
 23 here, you're looking up at a seven-story peak.

24 Now, this is a look at the other buildings and

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1 a profile view -- in effect, this picture shows you
 2 pretty much the distance -- the setback, you're talking
 3 about 20 feet compared to the standard setback of 44
 4 feet and what that would look like. This is really on
 5 Russet because on Beverly there would be a cliff here
 6 basically at four to seven feet, but we'll get to that
 7 in a second. But from a plan view, you can see just
 8 how massive this building is compared to a single-
 9 family home.

10 And this basically compares it to what it
 11 would be if you basically built a single-family home
 12 back there with a 40-foot setback and what that house
 13 would look like compared to that, being a single-family
 14 home.

15 This slide, basically, is intended to show
 16 some consequences aren't so obvious, that basically
 17 these buildings, which are the new buildings, are only
 18 a 20-foot setback from the lot line and they're
 19 basically a good two and a half stories, to put it
 20 generously.

21 These arrows are intended to basically
 22 demonstrate the extent of shadows from the peak of the
 23 roof onto the backyard of the abutters. I believe this
 24 is Beverly Road. Essentially, late in the day -- the

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1 red arrows are late in the day and the blue arrows are
 2 earlier in the day, but pretty much -- these abutters
 3 would pretty much have their backyards in shade all
 4 day. This is a winter day.

5 One thing that hasn't been discussed very much
 6 and, in fact, it's really been minimized, is the impact
 7 of the lights -- the walkway lights, the building
 8 lights -- on the abutter homes along Russett Road and
 9 even on Hancock Village itself. And we think that no
 10 one's really considered just what that means.

11 Essentially, all the people along Russett Road have, of
 12 course, these -- and on Beverly -- have these lights
 13 shining on the back of their houses.

14 One thing, too, that's ignored really are the
 15 effects of the traffic, the automobiles. And if I
 16 could go back to this one for a second, this, actually,
 17 is a fairly new parking lot. Maybe it was put there
 18 five or ten years ago. Essentially, what you've got in
 19 addition to the lamps along the walkway, you've got
 20 automobiles driving down to this parking lot, so you've
 21 got the lights shining into your kitchen and your
 22 living room and so on at night. And I think this
 23 project is going to make that all the much worse,
 24 particularly with moving the cars closer to the lot

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1 lines.

2 Essentially, the green belt was designed very
 3 carefully, in effect, to integrate the -- what had been
 4 a golf course developed into attached housing in a way
 5 that would be coherent or not too inconsistent with the
 6 single-family neighborhood where it was being built.

7 The green belt has actually been very successful. It's
 8 been really a very good achievement of this garden
 9 apartment style. In effect, particularly for Hancock
 10 Village residents, this has been -- you often see
 11 children playing back there, riding their bikes, people
 12 walking their dogs, and, actually, Hancock Village does
 13 routinely schedule events and so on back there. It
 14 actually has worked exactly the way it was designed to
 15 work in 1946. It's been very successful in that way.

16 And essentially, it would be completely
 17 paved. Essentially, half of it would be buildings or
 18 pavement and, in effect, you're really going to be
 19 converting green space into landscape. It's going to
 20 be reduced to just some plantings around automobiles,
 21 parking lots, and the buildings.

22 Water drainage, we talked about it becoming a
 23 problem but it already is a problem. People already
 24 have water in their basements. Essentially, water runs

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1 off into the watershed area back there. It's a problem
 2 now; it's been a problem for years. Everything that
 3 they do to pave this thing is going to make matters
 4 much worse.

5 This, actually, is a photograph of a truck
 6 that was being driven on that green belt area.
 7 Basically, it was stuck in the mud. On a rainy day,
 8 areas of the green belt itself are just basically mud.

9 You can walk on the grass, but you drive a truck on it
 10 and you're going to be there for a while. And they're
 11 basically going to be paving it over and putting
 12 buildings there and it's just going to make everything
 13 worse.

14 We're concerned about the casual way this is
 15 being dealt with. You know, to promise that there's
 16 going to be a culvert or magic pavement or whatever,
 17 that they're going to avoid a problem when, in fact,
 18 there already is a problem now. If you pave over half
 19 that space, it's just not going to work.

20 This, basically, is intended to illustrate
 21 part of their proposal to solve the problem. They're
 22 going to -- this is the Beverly Road side now. They're
 23 going to regrade the area, building, essentially, a
 24 wall here up against the lot line and that's going to

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1 be four to six or seven feet tall. This is a human
 2 being here, basically, for comparison and that's going
 3 to be right up against, basically, the backyards of the
 4 people on Beverly Road.
 5 And the interesting point here that's not
 6 necessarily realized is that those two-and-a-half-story
 7 buildings will be built on top of the seven-foot
 8 regraded property, so it's not going to be really two
 9 and a half stories relative to the neighborhood. It's
 10 going to be sitting on top of a six- or seven-foot wall
 11 or grade of property -- of dirt.
 12 This is meant to illustrate, essentially,
 13 their way of coping with this water issue. And we
 14 tended to focus right here on this particular spot to
 15 enlarge it. This, I guess, is described as a new water
 16 feature they're going to install. We would call it a
 17 "ditch." We expect there's going to be standing water
 18 there from time to time as well. Basically, this wall
 19 is going to exacerbate the problems that really already
 20 exist there.
 21 The fire chief has already expressed the
 22 opinion that the road -- the pattern of roadways here
 23 that they have in mind is dangerous, that the fire
 24 equipment cannot really get through there very well,

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1 and that they really do not back up fire trucks, they
 2 can't really make turns.
 3 The answer was, well, they do this elsewhere.
 4 And the fire chief answered, well, they used
 5 to do a lot of things that are unsafe and dangerous
 6 that we don't do anymore.
 7 But they seem to -- Chestnut Hill Realty seems
 8 to want to do this because in some other developments
 9 that's the way it was dealt with.
 10 The traffic issue they've also minimized to
 11 indicate that with all of this parking they're going to
 12 be adding, all the cars that are going to be added,
 13 they won't materially affect the traffic. But,
 14 basically -- and we'll get to this in a second --
 15 they're going to be adding 144 parking spaces just for
 16 this building area here behind Russett that's going to
 17 empty out through Asheville onto Russett. And then
 18 here is a very problematic area, too. It's the
 19 intersection of Beverly Road and Russett with
 20 Independence. You may notice that there's a one-way
 21 sign there that get's put out there during school days
 22 because the area is fairly dangerous and they restrict
 23 the way traffic goes by the schools.
 24 The public transit they talked about. They

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1 mentioned that there were three buses -- I mean, I'm
 2 sorry, that there were three bus stops. Well, they
 3 said there were three bus stops because the one bus
 4 stops at three bus stops. There's just the one bus.
 5 It barely runs on Saturday; it doesn't run on Sunday.
 6 Nowhere on its route does it go to a major
 7 supermarket. It's really very inadequate for putting
 8 that much housing -- adding housing to this particular
 9 area. You do need the cars.
 10 As I said, they're going to add 144 parking
 11 spaces for that tower and, basically, there are about
 12 167 -- I counted them. There are 167 spaces back there
 13 right now that empty onto Russett Road and have to go
 14 to Russett Road. There's no other way off that
 15 property. So they're basically going to add 86 percent
 16 of the parking spaces back there that have to empty
 17 onto Russett Road. I can only assume that if you add
 18 86 percent of the cars to a particular area that have
 19 to exit that way, you're going to add 86 percent of the
 20 traffic that's going to be emptying onto Russett Road
 21 the way this is arranged now.
 22 So basically, this summarizes those standards
 23 that MassDevelopment was supposed to be looking at, the
 24 conceptual site plan, the building mass, the

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1 topography, the environmental resources, and so on.
 2 Well, as far as conceptual site plan, all
 3 Chestnut Hill Realty says, well, it's residential, as
 4 if there's only two kinds of conceptual site plans,
 5 residential and industrial, I guess. The conceptual
 6 site plan is garden apartments with a green space
 7 around the apartments and this totally destroys that,
 8 which in the first letter they prepared, they pointed
 9 out.
 10 The building mass, these buildings are still
 11 absurd in size and number for the site and as I
 12 mentioned, that tower is really seven stories from the
 13 east side of the property still.
 14 As far as topography, blending with the
 15 topography, well, they're going to blast that hillside
 16 where that tower is going to get two layers of parking
 17 into the hillside and basically they're going to fill
 18 the property behind Beverly Road to a depth of up to
 19 seven feet to put buildings on top of it.
 20 Environmental resources, well, we mentioned
 21 the flooding and their ditch, basically eliminating the
 22 green space as far as environmental resources.
 23 Pretty much, these are the factors that in the
 24 first letter MassDevelopment was prepared to reject

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1 this project on. Essentially it is the same project.
 2 Integration into existing development
 3 patterns: Obviously, this project has nothing
 4 whatsoever to do with the existing development patterns
 5 in what is a single-family area with
 6 two-and-a-half-story attached walls. None of these
 7 buildings are appropriate for that area.
 8 They're supposed to publish their decision,
 9 whether it's appropriate or not, with supporting
 10 reasoning and reasonable detail. In the first letter,
 11 they did, to some extent, point out their reasoning.
 12 They mentioned some of these aspects, and they set it
 13 forth in reasonable detail. Of course, they didn't
 14 issue that letter.
 15 In the approval letter, they basically said
 16 nothing. They just basically approved it. It was a
 17 bare conclusion, they barely stated the conceptual
 18 project design, they used the magic words with no
 19 reasoning whatsoever. It's generally appropriate for
 20 the site, taking into consideration -- they cited the
 21 factors, so specific details, no mentioning about how
 22 any of that -- actually responding to any of those
 23 factors. And the only supporting and reasonable detail
 24 they added was they thought, well, maybe the Zoning

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1 Board or the Town could convince them to save a few
 2 more trees or maybe redesign the roof of the
 3 seven-story building. Maybe. They weren't insistent.
 4 They were leaving it up to you.
 5 Another factor that's being ignored is that
 6 the site is on a -- is national-registered eligible and
 7 that we understand that this plan ought to be reviewed
 8 by the Mass. Historical Commission. Chestnut Hill
 9 Realty hasn't done it and, of course -- and
 10 MassDevelopment didn't bother with that. We don't
 11 know, but if it is appropriate for the Zoning Board to
 12 ask for that review, we request that you do so. We
 13 think that would be appropriate. We think that the law
 14 expects that, basically, given the status of this
 15 property.
 16 In conclusion, there is nothing about this
 17 project that isn't negative to this area. I want to
 18 make it very clear, speaking for the neighbors, the
 19 abutter, South Brookline Neighborhood Association, all
 20 of us, that nobody ever objected to this property in
 21 all of the years since '46 when it was all affordable
 22 housing. That's not the problem. Nobody even minds --
 23 or objects to adding 39 or 40 affordable units.
 24 The problem is adding hundreds of market value

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1 apartments to a site that's already basically fully
 2 developed for the scheme of that area.
 3 Now, basically, given the rather casual,
 4 almost indifferent review and approval of the actual
 5 proposal by MassDevelopment, the Town and the neighbors
 6 chose to sue MassDevelopment for what appears to have
 7 been an inadequate decision-making process, failure to
 8 follow their own regulations. And the case, of course,
 9 is pending. We did ask the judge for an injunction to
 10 stay your proceeding until those matters were resolved,
 11 and he chose not to do that but -- and that's why this
 12 going is on -- going forward anyway.
 13 So the Town is represented by town counsel and
 14 the neighbors hired a lawyer, an expert, and his firm,
 15 in basically dealing with, frankly, unsatisfactory 40B
 16 situations, Jay Talerman, and we've asked him to come
 17 here and actually address a few matters -- bring a few
 18 matters to your attention that he would like to
 19 address.
 20 MR. TALERMAN: Hi. My name is Jay Talerman.
 21 I'm with the law firm of Blatman, Bobrowski & Mead.
 22 I'm not just an expert in unsavory 40Bs. I do
 23 represent cities and towns on the good and beneficial
 24 40Bs. I've represented, I think, 60, 65 towns

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1 including this town not so long ago on 40Bs. I've
 2 worked on -- I think the last count was 175 different
 3 40Bs. My firm does a lot of this work. There hasn't
 4 been as much traffic lately, but we do a lot.
 5 Along with your town counsel, we formed a
 6 plaintiff base in a case against MassDevelopment and
 7 the applicant here, and the essential elements of that
 8 case are not to challenge prematurely the merits of
 9 this case. That's for this Board to do, and I'm not
 10 going to sit here and wax on about your job or to say
 11 what your legal standards are. Town counsel and your
 12 special counsel as well as Ms. Netter can advise you
 13 appropriately on your role. But I do want to point out
 14 the status of that case because I do think it bears on
 15 the proceeding that you have before you.
 16 There are two prongs to our case, both to
 17 relate to the so-called jurisdictional or semi- or
 18 quasi-jurisdictional elements of a project comes before
 19 you under Chapter 40B. The first element, as you've
 20 heard a little bit, relates to the project eligibility
 21 letter issued by MassDevelopment. And the second
 22 element relates to the so-called 1946 agreement that
 23 underscores the -- how this property has been developed
 24 or maintained undeveloped in some respects since 1946.

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1 Now, these issues are relevant to the 40B
 2 process because two of three -- the three things that a
 3 developer has to provide before they can get a ticket
 4 to go forward before the Zoning Board of Appeals are at
 5 issue in that case.
 6 The first of those is a project eligibility
 7 letter, the so-called subsidy. It is not a mere
 8 preliminary matter. As has been shown to you, it is an
 9 important step with pages upon pages in the regulations
 10 and other standards and policy documents issued by
 11 agencies from GHCD to MassHousing to MassDevelopment to
 12 MassHousing Partnership in countless cases deciding
 13 exactly what you have to do. And I'm not going to
 14 recite all of those because they've been stated here a
 15 little bit before you.
 16 One of the other two elements is the element
 17 of site control, which is to determine whether or not
 18 the applicant actually has the requisite title or
 19 interest in the property to go forward. In other
 20 words, they not just own it or have an interest in it
 21 through a purchase and sale agreement, but that the
 22 property isn't otherwise encumbered by easements,
 23 roadways, or interests that form a practical barrier
 24 from a title perspective to what they want to do.

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1 That's where the 1946 agreement comes in.
 2 Those are both elements of our case. We
 3 challenged -- my clients, along with town counsel on
 4 behalf of the Town, challenged MassDevelopment's
 5 actions. Not so much from the standpoint that
 6 MassDevelopment didn't have the authority to issue a
 7 project eligibility in the first place, but the fact
 8 that their decision making is entirely arbitrary and
 9 capricious. As was pointed out by my clients before
 10 me, they issued one letter, or were prepared to issue
 11 one letter that had significant findings as to why this
 12 project was inappropriate, including elements with
 13 respect to the green space which is a major factor
 14 here.
 15 But they pulled that letter and didn't issue
 16 it when the developer themselves pulled out their
 17 application in its entirety. When the developer came
 18 back with a nominal decrease in height on one of the
 19 buildings and a nominal decrease in density but with
 20 all of the same warts on the project including eating
 21 up the entire green belt, MassDevelopment inexplicably,
 22 with the same staff, with the same information, with
 23 the same guidance from the Town, from other
 24 commentators on this project, turned around and without

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1 any reasoning whatsoever, at least any detailed
 2 reasoning, issued a project eligibility letter.
 3 Now, there are cases that run parallel to such
 4 decision making that would bind you, this Board.
 5 There's a Billerica case regarding zoning variances
 6 most recently that says mere recitation of the
 7 statutory criteria are insufficient reasons to deny or
 8 support a project. You have to give factors. You have
 9 to say why you're doing what you're doing. The second
 10 letter didn't do any of that. They didn't even bother
 11 to contradict the first one. They just repeated the
 12 words in the regulation.
 13 That is why we brought the action in the first
 14 instance, to say these both can't be true. They can't
 15 say this on one hand and have a thoughtful review and
 16 turn around a few short months later with a complete
 17 180 with all of the same data they had. It did not
 18 make any sense.
 19 So what we did is we appealed under a number
 20 of appeals. We filed the suit under a number of
 21 different actions, declaratory judgment as well as what
 22 we call certiori, which is a way to challenge decision
 23 making of agencies or boards that don't otherwise
 24 have -- where there's not otherwise a statutory means

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1 to challenge. Now, that was obviously met with a
 2 certain amount of resistance by the applicant as well
 3 as MassDevelopment.
 4 In addition to that, we also sought through
 5 declaratory judgement that the effect of the 1946
 6 agreement still exists. I'll discuss that a little bit
 7 further.
 8 It was only said to you at the last session
 9 that, well, the 1946 agreement doesn't apply and the
 10 former town counsel said so. Well, I'm not here to
 11 throw former town counsel under the bus. I know her
 12 well. She's competent and capable. But she made that
 13 decision, which isn't binding on anybody. It was just
 14 an opinion without the benefit of a case that came
 15 after, as was already discussed. That case is
 16 important because what it says is this:
 17 It says there are restrictions and agreements
 18 that us real estate lawyers love that will be binding
 19 only for a certain period of time. There are other
 20 restrictions and agreements that are binding in
 21 perpetuity. And then there are restrictions that are
 22 not in accordance with those types of statutes that
 23 have periods of time that bind them, statutes of
 24 limitations, so to speak, of 30 years, some for 50

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1 years, that arise through the zoning process. And
 2 that's what this case, Killorin vs. the Zoning Board of
 3 Appeals of Andover said. You can have all your other
 4 restrictions developed under what they call Chapter 184
 5 that have limited areas of vitality but if it's not
 6 under that, then -- and it's more under the zoning
 7 process in particular, then there is no limit on them
 8 and they can live on.
 9 Now, in fairness, the case involved a
 10 restriction that arose under a special permit granted
 11 by the Board. So that was blocking the developer, and
 12 that did not happen here. But nevertheless, this is a
 13 restriction contained within an agreement that was
 14 developed in accordance with the zoning process that
 15 was endorsed by town meeting as well as the attorney
 16 general when they approved the zoning. Now, no one
 17 knows exactly how that's going to come out, but it is
 18 before you.
 19 Now, that's an important framework for this
 20 reason, and this is why I think it involves you. I'm
 21 not just trying to say, here's what we're fighting on.
 22 It, actually, now turns to you a little bit.
 23 What we allege on behalf of the Town -- not on
 24 behalf of the Zoning Board, but on behalf of my

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1 client -- is that this developer shouldn't be allowed
 2 to go forward until these two items are adjudicated.
 3 The developer then countered that by relying
 4 almost 100 percent on a case known as Marion vs. the
 5 Housing Appeals Committee. Now, around that time when
 6 Marion was decided, the regulations were a little
 7 different and towns were not happy with subsidizing
 8 agencies, no more than they're happy with them today
 9 when they issue letters that towns feel they
 10 shouldn't.
 11 So they were challenging those letters. They
 12 started to challenge them a lot. And the Marion court
 13 said a very important thing in kicking out the Town of
 14 Marion. They said, okay, this is a preliminary finding
 15 by a subsidizing agency and you can't challenge it in
 16 court until you avail yourself of all the available
 17 administrative remedies including the zoning process
 18 or, if need be, the Housing Appeals Committee process.
 19 So go have at it at your Zoning Board, go have at it at
 20 the Housing Appeals Committee, and then come back to us
 21 if you still have an issue. They said you have all
 22 these administrative remedies, so we decline to take
 23 jurisdiction over it. So they have their ticket to go
 24 forward, and you can challenge it.

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1 Now, at that time I sat on an advisory
 2 committee with several other people, including a former
 3 selectman here in town, to talk about these regulations
 4 and we did talk about them a lot. But the Housing
 5 Appeals Committee, after that time, did not like the
 6 notion of the Marion case whereby towns could now
 7 challenge at the Housing Appeals Committee or within
 8 the zoning process itself, these site eligibility
 9 letters. They wanted those letters to be more
 10 sacrosanct.
 11 So what did they do? In 2008 they changed the
 12 regulations. They said you can no longer challenge
 13 those administratively. They're conclusive. So there
 14 is no more administrative remedy at the Zoning Board
 15 level, at the Housing Appeals Committee level. If the
 16 subsidizing agency issues a letter, if there is some
 17 kind of pro forma means of site control, you can't
 18 challenge that. The regulations now say it's
 19 conclusive, which we said to the Court, well, we can
 20 challenge these now because we can't challenge them
 21 administratively. It has to be one or the other.
 22 Either give us the opportunity to challenge them at the
 23 zoning level or the Housing Appeals Committee level, or
 24 we have to challenge them here before the Court.

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1 Now, perhaps we may have picked the wrong day
 2 in court, because we were 13th on the list in a motion
 3 session and it was kind of a long day. The judge,
 4 without spending a lot of time with us, denied our
 5 motion for preliminary judgement and said the Marion
 6 case applies.
 7 Now, if the Marion case applies, and far be it
 8 for me to disagree with the judge, then the
 9 administrative remedy is still active. That means that
 10 the Zoning Board can have at it. I'm not here to
 11 contradict the Court, nor should this Board be here to
 12 contradict the Court.
 13 If, in fact, as the applicant's attorneys and
 14 MassDevelopment's attorneys argued, the Zoning Board of
 15 Appeals has, still, an administrative remedy to
 16 challenge eligibility, then I would say you should have
 17 at it. You have the right to have at it.
 18 If, in fact, that judge was wrong, and that
 19 will be decided on the motion to dismiss, then you
 20 don't have that administrative remedy because the new
 21 regs are applicable rather than the Marion case, then
 22 we'll have that battle for you. But in the meantime,
 23 all we have to go on is what the judge said, is that --
 24 have at it because Marion says there's still

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1 administrative remedy.
 2 Now, we're in another phase of the case now
 3 where the applicant has moved to dismiss because it
 4 said well, there's still administrative remedy. Now,
 5 they're trying to have their cake and eat it too a
 6 little bit by saying well, Marion applies but only kind
 7 of. Well, I'm not buying that. The judge has said
 8 Marion applies. If Marion applies, then until the
 9 judge changes their mind, I would say that this Board
 10 has every right and opportunity to look behind that
 11 project eligibility and find it arbitrary and
 12 capricious.
 13 Now, if you make that finding and find that
 14 there is incredible inconsistencies, as I think
 15 everyone in this room, with the exception of a few,
 16 believes is the case, then you have the right to deny
 17 it because -- deny this project because A, they don't
 18 have the ticket to go forward in a project eligibility
 19 letter and second, they wouldn't have site control if,
 20 in fact, you find -- and I invite you to talk to your
 21 own counsel and not just me as to the 1946 agreement
 22 because that 1946 agreement expressly states for the
 23 reasons that are on the Board now why this project
 24 cannot go forward. Both can't happen. If that 1946

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1 agreement is still active, then this project is
 2 impossible.
 3 So those are the legal things. Everything
 4 else, I'm not going to repeat what all your duties are
 5 on the merits. I think your town staff does a terrific
 6 job. I think there are more than enough reasons, even
 7 if they survive these preliminary hurdles, for you to
 8 deny this project or sharply condition it in a way that
 9 it can be compatible with the Town's interests.
 10 So those are battles for a later day, but I
 11 thought it was important to express to you here and now
 12 the reasons by which there is another element to your
 13 review that you should take seriously and I invite
 14 you -- again, don't take it from me. You have a
 15 capable and excellent town counsel, you have a capable
 16 and excellent special counsel, and you have Ms. Netter
 17 here from the MassHousing Partnership. And while she's
 18 probably not serving as a lawyer for the Board, she's
 19 certainly very well experienced and versed.
 20 I would be remiss if I didn't chime in,
 21 however, on a preliminary matter that the Board raised
 22 earlier with respect to the issue of peer review in
 23 terms of architectural matters. And I remind the Board
 24 and others in the room that local concerns, which are

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1 the issues that you have to decide a 40B on, include --
 2 or it means -- this is how it's defined under the 40B
 3 regulation: The need to protect the health and safety
 4 of the occupants of a proposed project or the residents
 5 of the municipality to protect the natural
 6 environment -- and here's a quote -- to promote better
 7 site and building design in relation to the
 8 surroundings.
 9 Now, that clearly -- and I've heard the Board
 10 talk about design -- means that it is a live matter for
 11 you all. You have the right under Chapter 44, Section
 12 53G, which is the peer review statute, not just to
 13 request, but to demand peer review on anything that's
 14 germane to your zoning review. I think you should take
 15 up that. The consequences for an applicant's failure
 16 to pay for peer review can be explained to you by your
 17 counsel, but they can be dire for the application,
 18 certainly.
 19 So with that, I don't really -- I'll be happy
 20 to answer any questions, but I just wanted to make sure
 21 that the Board understood where we stand with the
 22 case. I invite you again to speak with town counsel
 23 who can verify everything I've said here today, but I
 24 do think that there is an important role for the Board

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1 here to play on matters relating to both project
 2 eligibility and the site control.
 3 MR. GELLER: Questions at this time?
 4 MR. HUSSEY: The only question I have is
 5 referring to the Massachusetts Historic Commission
 6 Review, although that was the previous speaker, I
 7 gather. I think that can be requested, but I question
 8 whether they will respond. They generally are involved
 9 only when they have specific interests.
 10 MR. GELLER: Sam, do you want to respond?
 11 MR. NAGLER: Yeah. One thing I could say from
 12 representing a lot of people who obtained bond
 13 financing from MassDevelopment is that they will not
 14 issue bonds without project eligibility process to
 15 Mass. Historic. It's an absolute prerequisite for the
 16 issuance of bonds for MassDevelopment.
 17 MR. HUSSEY: Even though the structure is not
 18 in an historic district or not subject to the D
 19 restrictions that the Mass. Historic Commission puts on
 20 grant projects?
 21 MR. NAGLER: Correct. If that is the case,
 22 then they'll issue a simple letter that says, you know,
 23 we have no jurisdiction or interest here. But it's an
 24 absolute part of any application for bond financing,

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1 that you have to satisfy them on Mass Historic and also
 2 on another statute, MEPA.
 3 MR. TALERMAN: I could point out for the
 4 Board's benefit that if the MEPA process is invoked
 5 here, and I believe it hit several triggers here
 6 including the fact that there's a subsidy, MEPA --
 7 under 40B, the MEPA office tends to take a holistic
 8 review under 40Bs, not just of matters pertaining to
 9 the specific trigger. At that point, I have found in
 10 the past that that's at the very least, if not before
 11 that, that Mass. Historical would check in. And my
 12 experience on Chapter 40B projects -- and I hope that's
 13 the case here because there's certainly some
 14 significant historical factors here -- Mass. Historical
 15 has not been swayed by the kind of -- the protection,
 16 so to speak, that 40B may provide. And they have,
 17 where appropriate, made critical review where necessary
 18 of 40B projects.
 19 MR. GELLER. It may be within the ZBA's
 20 authority to make a request of Mass. Historical.
 21 Do you have any comments on that?
 22 MS. NETTER. I would suggest that you lose
 23 nothing by contacting Mass. Historic.
 24 MR. GELLER: Thank you.

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1 Does anybody have -- do either of you have a
 2 comment on either the suggestion that the ZBA does have
 3 a role with respect to the eligibility letter or with
 4 respect to the 1946 agreement -- do you have anything
 5 that you want to add to this?
 6 MR. NAGLER. Well, I think the ZBA has already
 7 reserved its rights as to the project eligibility
 8 letter, so that's kind of out there.
 9 And the 1946 agreement, it's going to get
 10 adjudicated in this case and we'll know.
 11 MR. GELLER. Well, I think the suggestion
 12 that's being made is that it is within the scope of
 13 what the ZBA can consider and, frankly, has the ability
 14 to deny the application for either of these reasons
 15 should it make a determination that the argument that's
 16 being put forth makes sense.
 17 MR. NAGLER: If it makes that determination.
 18 MR. GELLER: Okay.
 19 MR. TALERMAN: And Mr. Chairman, I wouldn't
 20 suggest that even though project eligibility comes
 21 before everything, that you immediately truncate these
 22 proceedings. You've established a fairly orderly
 23 process. You have to consult with counsel. There are
 24 elements of this that are still to come. I see no need

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1 to immediately -- you certainly have the right to pick
 2 up those -- review of those two matters at any time now
 3 or at the end of the process. But I believe the member
 4 makes an important point, that you reserve your rights
 5 with respect to those. I think it's important that you
 6 continue to do so.
 7 At some point we'll get the adjudication, but
 8 we don't even have a case hearing date yet on some of
 9 the matters in this case, so I expect it will be --
 10 we'll see who gets to their adjudication first, this
 11 Board in its quasi-adjudicatory fashion or the court
 12 itself in its more formal.
 13 MR. GELLER: Thank you. We're going to take a
 14 short five-minute break. So it is now 8:15. We will
 15 start again at approximately 8:20.
 16 (Recess taken from 8:14 to 8:22.)
 17 MR. GLADSTONE: I'm Scott Gladstone, 383
 18 Russett Road, also a town meeting member from precinct
 19 16.
 20 I'm speaking about two things. One is what I
 21 was asked to speak about as part of the lineup here,
 22 which was to give some of you an overview of what the
 23 Hancock Village Planning Committee had looked at. But
 24 then I also want to share some of my own thoughts and

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1 observations. So I will start with the Planning
 2 Committee.
 3 Now, Irene went through much of this, but I
 4 was on that committee. I also was the person who did
 5 the first draft of the report, so I'm fairly familiar
 6 with what we talked about and where we ended up.
 7 As she stated before, we had a number of
 8 meetings, something like seven meetings over about a
 9 year and a half, all extremely well attended. We
 10 essentially had two major concerns; one of which
 11 explicitly is something that the ZBA will not be
 12 considering, but I will explain a little bit for
 13 history, and that's impact on schools, but then some of
 14 which is explicitly the sort of thing the ZBA should be
 15 considering and can consider.
 16 So number 1 is, again, the impact on schools.
 17 Our concern centered around the fact that based on the
 18 analysis done at the time, the current development, as
 19 unchanged, costs the Town in excess of -- tax income
 20 from the development -- about \$2 million a year.
 21 That's mainly because of the services provided to the
 22 number of school children who come from there. At the
 23 time, we were concerned about the fact that of the 670
 24 children who attend the Baker School -- now I'm told

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1 it's about 750 children who attend the Baker School --
 2 about 40 percent of them were from the Hancock
 3 Village. And so the concern was and is the number of
 4 children who would be added as a consequence.
 5 So I see that I -- I talk about this as a
 6 preliminary matter because of the impression that the
 7 developer gave that basically nobody was working with
 8 them, that there was no back and forth, no suggestions
 9 from the community. And that's simply not true. They
 10 were mainly concerned with the school matter, but also
 11 the environmental issues such as drainage issues,
 12 traffic, and as you've heard over and over again
 13 tonight, preserving that open green space.
 14 With respect to the school's population issue,
 15 for many meetings we discussed the possibility of
 16 restricting a large percentage of the housing by half
 17 of the housing they were proposing, which, by the way,
 18 the housing they were proposing was always about 460
 19 units. Never was that number going down. So at one
 20 point they came in and they said, let's do charrettes.
 21 Let's play with these blocks and you tell us where you
 22 want us to put these 460 units. And that was sort of a
 23 nonstarter because we still hadn't attacked this
 24 question of, you know, how are we not going to bankrupt

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1 the Town with this kind of increase?
 2 So we talked about at least half of the units
 3 being age restricted. And there are two kinds of age
 4 restriction the committee found. There's a 55 and over
 5 and a 62 and over. They're two very different animals.
 6 Chestnut Hill Realty was willing to talk to us about
 7 the 55 and over but was not willing to talk to us about
 8 the 62 and over. The 62 and over requires that
 9 everybody who lives in the unit be 62 years or older.
 10 The 55 and over requires that only one resident of the
 11 unit be 55 years or older. I'm sure we all know plenty
 12 of parents who have hit 55 and have school-aged
 13 children. Not to mention the multigenerational family,
 14 et cetera.
 15 So we didn't feel that that was going to get
 16 at, you know, this major stumbling block we were having
 17 with working with the developer. Nonetheless, they did
 18 not agree to do the 62-plus even though that was
 19 something that the community was very interested in
 20 exploring with them to allow them to build additional
 21 units.
 22 Similarly, commercial was going to be
 23 attractive for us because, again, commercial does not
 24 have school children. One thing that was discussed

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1 quite a bit was perhaps putting in an extended-stay
 2 hotel in part of the project. The feeling was that
 3 being an extended day hotel, this would not be
 4 something that would have cars coming in and out all
 5 the time every day, checking in and checking out. But,
 6 again, being a commercial element, it would not put any
 7 school children in.
 8 I personally contacted a couple of purveyors,
 9 including speaking to the people at the Marriott
 10 through the Chamber. They all told me that this was a
 11 fairly attractive site for it because it's so close to
 12 the highways. And, in fact, Independence Road, as I
 13 know Mark has probably experienced living in South
 14 Brookline, is a major highway itself of sorts because
 15 all the people who come from the south part of Route 1,
 16 Norwood, that whole corridor to go to the Longwood
 17 Medical area go through our neighborhood even though
 18 there's school children, hundreds of school children
 19 crossing the street at Beverly, Independence, Russett,
 20 and Grove.
 21 That was rejected. They felt like, well, we
 22 don't do commercial. That's not something we do.
 23 Notwithstanding the fact that they have a very
 24 successful commercial site in West Roxbury just down

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1 the road, that was not something they wanted to do.
 2 Now we see that there is an extended-stay-type hotel
 3 that is well into development on Route 9 at the old Red
 4 Cab site, so opportunity lost. But it's not as if the
 5 neighborhood had not been trying to work with the
 6 developer in order to allow the developer to develop
 7 more and make money but not impact the schools and
 8 impact the green space area.
 9 This dovetails a little bit with the other
 10 piece I want to talk about. You know, where might that
 11 hotel have gone? At the time, the proposal included --
 12 they were going to tear down this group of housing
 13 here, and they were going to build something fairly
 14 similar in scope to what they're proposing here. This
 15 is a very large outcropping of -- also of ledge, of
 16 puddingstone.
 17 But they were proposing standard-type housing
 18 here or, as we were saying, why not the hotel, with
 19 parking underground. And we were very interested in
 20 talking to them about a development that would be
 21 pushed further away from all of the -- from the
 22 existing residences along Beverly, in particular, and
 23 push it away from the school. This is right up against
 24 the Hoar Sanctuary here.

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1 This is not currently part of their plan, but
 2 when we were discussing it, they were talking about how
 3 this, which is a garage, could be made into an archway
 4 with a curve cut here so the road would go up through
 5 what is now a parking lot currently and then over what
 6 is now grass. This is all a grassy area. This is a
 7 grove of trees here in front of the ledge. But the
 8 idea was that the -- this would be an access road. It
 9 would come up and then there would be -- they'd have
 10 access to this area. Because this also has a pretty
 11 high elevation here, so by coming in from the back,
 12 they were able to access the parking from the lower
 13 elevation. This is still currently used as a -- sort
 14 of a utility road right now. If you go out there
 15 during the muddier seasons, you always see tire tracks
 16 here because, you know, whatever they're doing to move
 17 salt, et cetera, to -- like, this garage, for instance,
 18 and this is another access point. If this garage were
 19 removed, a shorter access point could be made from this
 20 access road here to this sort of development.
 21 Now, this is moving into the second part of my
 22 comments which is another possibility. Now, I agree
 23 with all of the previous speakers and probably speakers
 24 later that there's plenty of grounds, sustainable

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1 grounds, for the ZBA to deny this permit application,
 2 just as all the other town boards are urging, including
 3 the Planning Board.
 4 However, if the Board were inclined to agree
 5 to the petition with conditions, these are the
 6 conditions that I would suggest. So this monstrosity
 7 of a building here, you've heard about all of the
 8 traffic problems that it will cause along Beverly. And
 9 by the way, their traffic engineer, Mr. Michaud, is
 10 someone who I've used. He's terrific because you tell
 11 him what you want to see and he crunches the numbers
 12 and he gets you what you need. It's just how that --
 13 you know, I'm not saying there's anything dishonest
 14 about it. There are different models, and he chooses
 15 the model that's most favorable to your position. It's
 16 great.
 17 So what I experience from this house here --
 18 it used to be the Lagorians' (phonetic) but it's now my
 19 house -- is that this is near the intersection where
 20 all the school children cross. And for that 20 minutes
 21 or so between, say, about ten of eight and ten past
 22 eight, with all the people that are late, the cars are
 23 stacked up so far back here because of all the kids
 24 trying to cross and all the traffic that goes all the

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1 way back to the light on the VFW, I can't get out of my
 2 driveway. The cars are all backed up. So that's with
 3 the current development.
 4 We're talking about adding, you know, the
 5 other 120-plus cars, whatever, to come out of Asheville
 6 and then turn onto Russett. People are not going to go
 7 South Street because then you hit the light here which
 8 doesn't really work in the morning. They're also not
 9 going to go all the way out to the West Roxbury Parkway
 10 because then this gets all stacked up before the rotary
 11 which is over here.
 12 So back to what I would suggest as conditions.
 13 This monstrosity, this gets moved here, gets
 14 straightened out, gets moved over here, keep the house
 15 here, fine, keep some of the housing on either side of
 16 the access roads, although I'd love to see this road
 17 cut off, which was an earlier suggestion by the
 18 developer but that's been abandoned. This housing and
 19 this housing -- and this would all have to go -- could
 20 all fit very nicely around the edge of this
 21 puddingstone outcropping with parking underneath, which
 22 is what they're proposing now. You could probably even
 23 fit a couple of these housing units around this
 24 crescent and similarly put parking underneath. So

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1 here, instead of having, you know, over 100 units here,
 2 you'd have something like 80 units and that might be
 3 reasonable.
 4 Similarly here, you -- even if they kept
 5 something of this, although I'd like to see this turn
 6 with this thing coming out here and this thing going
 7 down here so that we have a little bit more of an open
 8 courtyard feeling here rather than this being right
 9 onto the street, if we moved this here, this here, this
 10 here, and this here, which is similar to the proposal
 11 as they had it back in 2011 but instead of making this
 12 entire green space a parking lot, which is what that
 13 proposal was, you put the parking underneath -- again,
 14 underneath, which is what they are proposing over
 15 here -- and they just have a thin, narrow access road
 16 to get into that underground parking, you would
 17 preserve this green space as the '46 agreement sets out
 18 to do and as the design is, you would similarly, with
 19 moving the housing over to this crescent because you'd
 20 put this building over here, save all of this green
 21 space.
 22 Now, you're still going to have a lot of
 23 traffic. My proposal would be to -- as a further
 24 condition, between the hours of, say, 7:00 and 9:00

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1 have no left turns out of here or out of here because
 2 this is very close to that intersection. A left turn
 3 trying to merge into traffic here would block up
 4 traffic in this direction which would all bottleneck up
 5 this whole intersection. I guarantee it. If they all
 6 had to go right, they would either go shopping a little
 7 bit at the CVS, which is also Hancock Village's
 8 property, or they'd just go around the VFW and then up
 9 onto the Horace James Circle from the other end. The
 10 traffic would flow fine, but you would not be creating
 11 a more dangerous situation than we already have over
 12 there.

13 Let me just make sure I have -- oh, the most
 14 important thing. As a counter-availing amenity -- to
 15 using zoning speak -- for being allowed to build over
 16 the two and a half stories in this area over in the
 17 corner right next to Boston, the green space should be
 18 under a preservation easement. If they put a
 19 preservation easement in, then we have no issues with
 20 this getting inappropriately developed contrary to the
 21 '46 agreement and then -- and just the larger plan
 22 here. The appeal from conditions are whether it makes
 23 the project uneconomical. How can it be uneconomical
 24 if they're still being allowed to build the 192 units?

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1 They would just have to put it someplace else.
 2 Now, they have a couple of rejections to this
 3 suggestion. This suggestion was not originated by me.
 4 This suggestion was originated by -- I like to call it
 5 the Hamlin/Heiken Plan because those two members of the
 6 Zoning Board walked through the property --
 7 MS. SCHARF: The Planning Board.
 8 MR. GLADSTONE: I'm sorry. The Planning
 9 Board. Thank you.
 10 -- walked through the property and they urged
 11 the developer to listen to them as somewhat experienced
 12 architects and to -- rather than take the worst
 13 elements of their earlier proposal and only proposing
 14 that in this phase, that -- rather than doing that,
 15 just instead move the development over to where they
 16 had originally proposed it in addition to what they're
 17 doing here.
 18 And when that idea came up, one of the
 19 objections were that well, that will be like our
 20 putting this house in over at the Baker School because
 21 the plots, which make up where they are proposing the
 22 development, are owned by different entities than where
 23 I'm proposing to put the space over where -- over, you
 24 know, at this Boston corner.

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1 That sounded right. The proposal and the
 2 application to MassDevelopment were made in the name of
 3 the -- something like the Residences of South Brookline
 4 LLC.
 5 So I went online, went to the Norfolk deeds,
 6 and the Residences of South Brookline, LLC don't own
 7 anything. According to public record, Hancock Village
 8 II, LLC owns every one of the parcels that we're
 9 talking about. They own this parcel, they own this
 10 parcel, and they own this parcel, and they have since
 11 2008 when they bought it for a dollar from another one
 12 of the Chestnut Hill Realty family of corporations.
 13 I don't know if somebody oops'd. I don't
 14 know. Maybe there is a deed that just hasn't been
 15 recorded, but that seems like a red herring. And
 16 certainly if it can be sold for a dollar, this is
 17 clearly still in the control of the same people. These
 18 are absolutely overlapping, interlocking directories.
 19 What can be sold for a dollar can be unsold for a
 20 dollar. The Assessor's Office puts the green spaces at
 21 \$5 million. That would be the market rate. A dollar
 22 is a little less than that. So I don't see that as a
 23 real hurdle.
 24 They also were concerned about the fact that

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1 putting housing over here would be in violation of the
 2 NCD and of other aspects of 40A because there would be
 3 setback issues with the existing building. Of course,
 4 they had that same problem already with their
 5 proposal. The NCD calls for these whole areas not to
 6 be built on, so if they have an NCD problem with this
 7 area, they already have an NCD problem, so that seems
 8 to be a red herring.
 9 Similarly, as far as having problems under
 10 40A, under usual zoning -- they're asking for relief
 11 all over the place for the usual zoning under 40B. In
 12 particular is the setbacks. They do not have the
 13 required 40-foot setbacks to the rear. They are saying
 14 that this is the access road. That necessarily, under
 15 the zoning bylaw, makes these the fronts of the
 16 buildings. If these are the fronts, these are the
 17 rears. That requires a 40-foot setback under zoning.
 18 Since they are not in compliance with that, obviously
 19 nothing -- compliance with 40A is also not a real
 20 concern.
 21 So I do not believe that there's any
 22 reasonable impediment to putting those kinds of
 23 conditions on, if you say yes to anything. But in
 24 conclusion, I agree with everyone who has spoken and

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1 will speak saying that you have the authority,
 2 defensibly, to say no to the entire thing and I would
 3 encourage that. Thank you.
 4 MR. GELLER: Thank you.
 5 MR. VERRILL: Good evening. My name is
 6 William Verrill. I live at 45 Asheville Road in
 7 Brookline on the corner of Asheville and Russett. I'm
 8 a direct abutter right at the entrance there to Hancock
 9 Village. I'm also a registered professional engineer
 10 in the State of Massachusetts. I primarily do
 11 structural engineering, but I started my career doing
 12 land development and drainage design, and I'd like to
 13 talk tonight a little bit about the drainage report
 14 that was prepared for this project.
 15 The first thing I'd like to focus on is the
 16 porous pavement aspect of this job. That's the
 17 cornerstone of their drainage design, and I know last
 18 meeting, the presentation, the term "magic pavement"
 19 came about. I'd just like to share a few facts about
 20 porous pavement and really what it does and how I feel
 21 it's not appropriate for this site.
 22 So I'm going to read some quotes and it's all
 23 from the EPA stormwater -- they put together this
 24 stormwater technology fact sheet on porous pavement, so

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1 all the quotes I do will be directly from this fact
 2 sheet.
 3 The first thing I want to quote is, the report
 4 recommends that porous pavement should only be
 5 considered when grades, subsoils, drainage
 6 characteristics, and groundwater conditions are
 7 suitable. The slope should be flat or very gentle.
 8 That is not the site here.
 9 This soil will not drain because it's
 10 puddingstone. As you went on the site walk, you saw it
 11 sticking right into the ground and believe me, when you
 12 dig a few feet where there is grass, you're going to
 13 find puddingstone.
 14 Also, the slopes are not gentle. Porous
 15 pavement only really works if you have a nice, flat
 16 surface. These have very steep grades. If you look at
 17 the proposed grading, you will see that the slopes
 18 probably, in most cases, exceed the 5 percent.
 19 The second thing the report goes on to say is,
 20 "The use of porous pavement may be restricting in cold
 21 regions." And that's not necessarily because of the
 22 cold. It's because of the deicing, the sanding, the
 23 salting. Once that sand gets into the porous pavement,
 24 it ruins it. It stops its porosity. And even though

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1 they recommend having vacuum trucks go out four times a
 2 year and vacuum it up, the plows and the sand, the
 3 debris, leaves, everything could clog this up and
 4 really render it useless.
 5 There's some other drawbacks that the report
 6 goes on to mention. One of them is, many pavement
 7 engineers and contractors lack the experience with this
 8 technology. They also say porous pavement has a
 9 tendency to become clogged if improperly installed and
 10 maintained. Porous pavement has a high rate of
 11 failure, and I'll go on to quote that failure later on.
 12 There's some risk of contaminating
 13 groundwater, depending on soil conditions and aquifer
 14 susceptibility. So the porous pavement allows not just
 15 the water to go through, but everything, oil, anything
 16 that drips out of the 300 cars that are going to be on
 17 those parking spaces. All that stuff goes into the
 18 ground and then eventually will make its way -- since
 19 there is no soil underneath to take that away, it's
 20 going to hit the ledge and it's going to come to the
 21 neighbors' houses on Russet and Beverly Road and
 22 probably most of it will eventually make its way -- if
 23 it doesn't go to your basement -- into the Hoar
 24 Sanctuary.

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1 Fuel may leak from vehicles and toxic
 2 chemicals may leach from asphalt and/or binder
 3 surfaces. Porous pavement systems are not designed to
 4 treat these pollutants so, again, all the stuff that
 5 goes off, it just soaks through, it doesn't really
 6 treat.
 7 Anaerobic conditions may develop in underlying
 8 soil if the soil is not able to dry out between storm
 9 events and that impedes biological decomposition.
 10 The report goes on to warn, the use of porous
 11 pavement does create the risk of groundwater
 12 contamination. Pollutants that are not easily trapped,
 13 absorbed, or reduced such as nitrates and chlorides may
 14 continue to move the soil profile into the groundwater,
 15 possibly contaminating the drinking water supply. So
 16 there is these warnings about it. It's not just that
 17 it will fail to drain the site, but it could pollute
 18 the site as well.
 19 The report went on to report that there were
 20 several unknowns about porous pavement and I quote
 21 here, "Whether porous pavement can maintain its
 22 porosity over long periods of time, particularly with
 23 resurfacing needs and snow removal." And as everyone
 24 knows from this winter, there's going to be a lot of

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1 snow removal and a lot of sand and that pavement's not
 2 going to last.
 3 It goes on to say, "Whether porous pavement
 4 remains capable of removing pollutants after
 5 subfreezing weather and snow removal." So, again, it
 6 does not -- it doesn't work in the winters.
 7 And, again, one of the most alarming concepts
 8 of the report is when it talks about the long term
 9 performance of porous pavement. The report states
 10 that, and I quote, it has demonstrated a short life
 11 span, and I quote, traditionally, porous pavement sites
 12 have a high failure rate, approximately 75 percent,
 13 three out of four sites with porous pavement. And
 14 these are the best conditions, because right now it's
 15 very new technology and towns and cities are only
 16 approving it in the very best conditions.
 17 And I know a lot of people -- UNH does a lot
 18 of work on porous pavement and a lot of times when
 19 porous pavement is presented to the zoning boards, the
 20 planning boards, whatever, they'll cite two projects.
 21 They'll cite one out in Concord. And that site is
 22 probably the best possible conditions, deep, sandy
 23 soil, so when that rain comes in, yes, it goes through
 24 the porous pavement. It has, you know, 20 or so feet

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1 of sand below it to take that away.
 2 In a condition like this where you try and
 3 pave over puddingstone, yeah, the water's going to leak
 4 through but it's going to go right to the puddingstone
 5 and follow that stone out to its nearest point.
 6 And I also want to make one more point about
 7 the retaining walls. They show that retaining wall is
 8 going to block that water. Well, what happens with a
 9 retaining wall is the water's going to soak behind that
 10 wall and it's going to rise up. And if you don't
 11 design the wall -- and I've designed hundreds of
 12 walls -- if you don't put weep holes in the wall to
 13 allow that water to flow, you're going to build unequal
 14 hydrostatic pressure and that wall will topple over.
 15 So every wall they design is going to allow that water
 16 to flow from the site, and what's on the opposite side
 17 is everyone's houses. And if they don't put those weep
 18 holes in, there's another name for that structure.
 19 It's called a dam. So dams are not what you want. You
 20 don't want a line of dams behind this project.
 21 The report goes on to say, it's not
 22 recommended on slope greater than 5 percent and it's
 23 best with flat -- flat as possible, and that's not the
 24 case. The minimum depth of bedrock in seasonal high

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1 water is four feet. And if you read the drainage
 2 report that was prepared, you know, there were 76
 3 borings taken but they only used about five or six of
 4 them to say how deep the ledge was. And I believe --
 5 and I don't know, unless someone can show me all of
 6 those -- that those were cherry-picked. And the very
 7 best one, that was still less than four feet to that
 8 ledge or to the groundwater.
 9 But also, this report from the EPA recommends
 10 the minimum setback from building foundations is 10
 11 feet down gradient and 100 feet up gradient. So that's
 12 for the slope. If you're down the slope, you want to
 13 be at least 10 feet, 100 feet upgrade. They're paving
 14 right to the edge of these buildings, so these pavement
 15 areas are nowhere near this requirement of 10 feet to
 16 100 feet away.
 17 You'd like to avoid high and moderate traffic
 18 areas. Everyone who lives in that area knows it's a
 19 very traffic area. All day long the cars go by.
 20 And then pretreatment -- they recommend
 21 pretreatment. So usually the EPA recommends that you
 22 have a 25-foot grass buffer area around the porous
 23 pavement so no water is running off the site onto the
 24 porous pavement. This is right next to the adjacent

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1 site, so any water on the puddingstone, on the existing
 2 paved surfaces, you don't want that running onto this
 3 porous pavement. It'll just overload the system and it
 4 won't work, so you need at least the minimum of a
 5 25-foot buffer to separate these systems.
 6 And then specifically, I did go through the
 7 report and I have several notes and I'd just like to
 8 point out a few of them. On page 5 of the report it
 9 says, "Efforts should be made to protect existing trees
 10 during the construction period." This is misleading.
 11 98 percent of the trees will be removed according to
 12 their own calculations, so if you're removing 98
 13 percent of the trees, what effort have you made to
 14 protect any of them?
 15 Page 7 states, "The project does not have
 16 direct discharge from the stormwater or water from the
 17 wetlands." This is one of the conditions of passing
 18 the wetland protection, and this is not necessarily a
 19 true statement. The analysis assumes there are no new
 20 discharges. There is a discharge pipe that runs from
 21 the site into the Hoar Sanctuary.
 22 Now, they're assuming that because they're
 23 feeding this pipe and they're not putting a new direct
 24 pipe from the site into the Hoar Sanctuary that they're

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1 not adding discharges. What they're not understanding
 2 is, is that water soaks into the ground and because
 3 they don't know the ledge profile, they're putting more
 4 water and the discharge point is not a pipe, but it's
 5 the ground. And they're going to put -- for the porous
 6 pavement to work, they're going to put crushed stone
 7 and they're going to create a channel that routes this
 8 water to the Hoar Sanctuary. So I think that's a
 9 very -- something that they need to clarify in their
 10 next report.

11 The report goes on to say the stormwater
 12 analysis -- well, it doesn't take into consideration
 13 the number of trees, and I'd just like to make this --
 14 interesting factor I found out. In one day, one large
 15 tree can lift up 100 gallons of water out of the ground
 16 and discharge it into the air. The report didn't take
 17 any consideration into the fact that 98 percent of
 18 those trees, which amounts to dozens of trees and
 19 thousands of gallons of water -- without those trees in
 20 there, where's all that water going to go? The report
 21 totally glossed over that fact.

22 Some more facts: For every 5 percent of tree
 23 cover added to a community, stormwater runoff is
 24 reduced by approximately 2 percent. So that said, if

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1 you're taking 98 percent of the trees away -- it says
 2 for every 5 percent, so that's 20 times 2 percent,
 3 that's 40 percent. So they're trying to overcome
 4 this -- they have -- nowhere in the report do they
 5 overcome that 40 percent of runoff from just taking the
 6 trees out alone. If you start with that base and just
 7 decide you're going to take all the trees away, how are
 8 they mitigating all that runoff? The report doesn't
 9 address that at all.

10 The stormwater report indicates that the peak
 11 discharge will be less in the postdevelopment state
 12 than the existing condition. And I think a lot of
 13 people don't understand, necessarily, how these
 14 discharge reports work. Basically, there's a graph
 15 that shows the existing conditions. There will be a
 16 storm event, whether it's a two year, a ten year, a
 17 five year, the rain will come in, it will soak, and
 18 then there will be a peak time as the water is
 19 discharging away and there will be a graph and then it
 20 will slowly slow down and then it'll go into the soil.
 21 So that peak is really what these requirements focus
 22 on, but the area under that graph is the amount of
 23 discharge.

24 So the way that these regulations were

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1 written, they don't want the peaks to be excessive
 2 because they feel that if you minimize the peaks, then
 3 there will be enough time for that underlying soil to
 4 absorb the extra water over the 24 hours.

5 But when you have ledge there, what's really
 6 important is the area under that graph because that's
 7 the total volume of water. And this report goes on --
 8 if you read the numbers, you can go -- and I've done a
 9 pretty thorough analysis of it -- the percent in
 10 impervious areas go from 16.14 percent to 49.51.
 11 That's a three-fold increase in impervious areas. The
 12 extent of woodland goes from 22.76 percent to .52
 13 percent, a 96 percent decrease in wooded areas.

14 And then if you take their math, they have
 15 these special curve numbers that they use to figure out
 16 the graphs and everything, but if you look at their
 17 curve number alone, it goes to a 21.7 percent increase
 18 in runoff. So that means if the site right now has
 19 1,000 gallons of runoff during a storm event, it's
 20 going to increase by 21.7 percent. It may hit your
 21 yard two hours after it did the peak before, but
 22 believe me, all that water is still coming and more and
 23 there's no way for us, for our sump pumps -- everyone
 24 knows that our sump pumps run more than 24 hours during

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1 the spring.

2 The groundwater elevations shown on the table
 3 were assumed to be estimated seasonal high groundwater.
 4 These values were measured January 22, 2013. Now,
 5 everyone who does this wants to figure out where the
 6 groundwater is, they know that you don't go out in
 7 January.

8 For my job we do a lot of inspections of the
 9 central artery tunnel and, you know, in the winter the
 10 infiltration of those tunnels is fine. In the spring,
 11 thousands of gallons are going through those tunnels or
 12 whatever. There's a huge problem. The pumps can't
 13 handle it. That's because the ground's frozen right
 14 now. It's 20 below out here. The ground's frozen and
 15 it's full of snow, so the groundwater is naturally
 16 lower. It's not the peak. It's actually at the lowest
 17 point in January. Once the ground thaws, the snow
 18 melts, and the spring rains come, that is when the
 19 groundwater is.

20 I did a little investigation and during the
 21 rainfall period between January 1, 2013 and January 22,
 22 2013 we had about .56 inches of rain. For the period
 23 of March 1, 2013 to March 22, 2013, we had 3.85 inches
 24 of rain or seven times as much. And that seven times

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1 as much rain is going to increase the groundwater level
 2 at least two feet. And that's why we say when you're
 3 figuring out groundwater level, you should use the
 4 highest measured value over the 21 rainiest days of the
 5 calendar year.
 6 So they need to measure the rainfall every day
 7 for a year, take a grouping of the 21 rainiest days,
 8 and that's at the groundwater level and that is where
 9 you have to be four feet above in order to even have a
 10 chance for this porous pavement to work. And because
 11 of all the other reasons, it still probably won't.
 12 And I did some analysis on the groundwater
 13 they were using and in general it's only about three to
 14 five feet above the existing groundwater level. So if
 15 that groundwater is actually two higher, you're only
 16 one to three above that and the pavement will fail.
 17 Compliance with Standard 3. All infiltration
 18 structures must be fully drained within 72 hours.
 19 They're using this thing called a storm sceptor which
 20 is basically a giant catch basin that the water comes,
 21 it gets filtered around, and then once it's filled up,
 22 the water comes out. Now, these storm sceptors hold
 23 about 450 gallons of runoff. The problem is, when they
 24 run their analysis, they assume it's empty, they run

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1 their storm through, 450 gallons is held, and then the
 2 water goes out and that's how they get their delayed
 3 discharge. They delay their peak.
 4 So the problem is, once that 450 gallons is in
 5 there, it's going to take forever to get it out. The
 6 average evaporation rate is .25 inches per day. So
 7 imagine trying to evaporate eight feet of water that's
 8 below ground that's not exposed to the sun. So these
 9 will never be empty. Once the first storm comes
 10 through, fills them up, the second storm comes through,
 11 that water is in there. It's just going to pass right
 12 through the structure and there goes their peak
 13 discharges because it's all coming at you.
 14 The standing water also could be a breeding
 15 ground for disease-carrying insects such as West Nile
 16 Virus and EEE.
 17 There's another requirement that states there
 18 should be greater than a two-foot separation between
 19 the bottom of the substructure's basin and the seasonal
 20 high groundwater. Now, I downloaded the details of
 21 these basins and they're at least eight feet deep and
 22 the groundwater is only three feet deep, so there's no
 23 way that we can maintain that two-foot separation
 24 between these structures and that groundwater.

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1 And I don't know if they're assuming that
 2 these structures are somehow made waterproof, but
 3 typically these concrete precast units are not
 4 waterproof, so chances are, once you put that in the
 5 ground it's just going to fill up with groundwater, not
 6 necessarily stormwater.
 7 This Compliance 4 says water quality states
 8 porous pavement will be cleaned after major snowstorms
 9 and vacuumed quarterly. This will be very difficult to
 10 enforce and most likely not done. Usually, when you
 11 have porous pavement it's in an isolated, new
 12 development. It's not part of an existing
 13 development.
 14 Now, I live right on the corner of Asheville
 15 Road and the entrance of Hancock Village and I know
 16 during the storms those sand trucks are flying up there
 17 15 times a day. Now, I'll give them credit. They plow
 18 and they do sand a lot and those trucks use a lot of
 19 sand. But you can't tell me that in the middle of a
 20 snowstorm this truck is going to know, I can't put sand
 21 here but I have to put sand here. Plus, they're going
 22 to put sand at the top of the hill. As that melts,
 23 that's just going to run down the hill into the porous
 24 pavement. I don't think there's any way to segregate

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1 the two projects.
 2 And then this design calls for regrading the
 3 site, significant amounts of retaining walls, and,
 4 again, I talk about hydrostatic difference.
 5 So, you know, for all these reasons -- and I
 6 have some more, and I know there will be a dedicated
 7 meeting for drains. But I think the whole report needs
 8 to be kind of looked at from the beginning because I
 9 don't really feel that they've used appropriate
 10 engineering designs to complete this report. Thank
 11 you.
 12 MR. ABNER: My name is Anthony Abner. I live
 13 at 265 Russett Road. I'm going to start off by saying
 14 I'm not an architect, I'm not a lawyer, and I'm
 15 certainly not a civil engineer. But I have read the
 16 zoning bylaws, so I'm coming here to ask specific
 17 questions about the project in relation to the
 18 Brookline zoning laws.
 19 I will say that I have made one previous
 20 appearance before the Brookline Zoning Board of
 21 Appeals. That was done in 1996 when I wanted to do a
 22 500-square-foot attic renovation. It was declined.
 23 Okay. So we're going to talk about the
 24 parking lot setback, building spacing, and building

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1 height.
 2 So the first thing to notice about these plans
 3 is that this is a thousand-foot driveway. This is the
 4 Beverly Road side. So off of Independence they're
 5 calling this a driveway and I think everybody
 6 understands why this is a driveway, because that way
 7 they can say that these are side buildings -- side
 8 clearances, not rear clearances, rear setbacks.
 9 So we have heard, in the previous presentation
 10 in January, that they will allow on-street parking. We
 11 heard that these would be maintained in the same manner
 12 as the existing roadways, Gerry Road, Thornton Road,
 13 and Asheville. Brookline is -- in their plans, they
 14 talk about this as a roadway, not a driveway.
 15 Well, the zoning bylaws actually don't say
 16 very much about this. They do say it has to be a
 17 minimum of 20 feet wide for two-way use, and it has to
 18 be a maximum of 20 feet wide at the street lot line in
 19 residence districts, but other than that they don't
 20 really define the difference between a road and a
 21 driveway.
 22 We see in this parking lot setback there's
 23 stated to be 20 feet except at the hammerheads, and
 24 they appear to conform to the setback for side lots if

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1 the roads are, as I said, considered driveways.
 2 Okay. So what do the bylaws actually say
 3 about that? Well, there are actually two sections of
 4 the bylaws that I can find that describe parking lots
 5 and this is in Section 6.045, Paragraph 4 where they
 6 talk about the design of all off-street parking
 7 facilities and they specifically state that the setback
 8 shall be provided as follows, and then there's the
 9 clauses. But it says, "Notwithstanding these clauses,
 10 a parking lot containing more than six vehicles shall
 11 be set back from all lot lines the distance specified
 12 for minimum front yard depth under table 5.01. I will
 13 show that in a minute.
 14 There's a second section under the title
 15 "Cluster Housing and Designed Groups of Housing."
 16 Cluster housing appears to be assigned as anything more
 17 than a single-family house. And it says under 5.11,
 18 Section 2K, "No building, parking area, swimming pool,
 19 or any other area of active recreation shall be located
 20 near to any side or rear lot line as the dimension
 21 specifies for the minimum rear yard by table 5.01."
 22 So let's take a look. 5.01, S7 zoning, which
 23 this is, it has two lines. One says for a single-
 24 family residence. The other says for any other

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1 structure or principal use. I believe a parking lot is
 2 a principal use. But the front yard setback is 30
 3 feet. The rear yard, which is specified under 5.11 as
 4 the minimum required, is 40 feet, not 20 feet.
 5 So if we look at the north section of Russett
 6 Road, we find that this parking lot is in violation,
 7 20-foot setbacks. The parking garages here are 20-foot
 8 setbacks with the property line.
 9 On the Beverly Road side, again, 20-foot
 10 setbacks except, of course, at the turnaround area
 11 which is here which looks like it's more like 12 and a
 12 half feet from the plans.
 13 On the north section of Russett Road, again,
 14 20 feet, on the south section, 20 feet, and then on the
 15 rear section here, this actually comes to seven and a
 16 half feet from the property line. It's a hammerhead
 17 here. So it's 20 feet here and, by their plans, about
 18 seven and a half feet here.
 19 I next want to talk about the separation of
 20 these buildings here. You can see it's a 20-foot
 21 separation between these two. What do the bylaws say
 22 about that? Well, under 5.11, again, it says, "Each
 23 group of attached single-family dwellings shall be
 24 separated from the end of the other such group by a

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1 distance not less than two times the minimum side yard
 2 specified." Again, that side yard is 20 feet. So
 3 those buildings must be 40 feet separation by the
 4 Brookline zoning bylaws. And, again, the parking lot
 5 here is 20 feet, this has to be 40 feet, and the
 6 hammerhead here, as I said, is about 7 and a half feet
 7 from the property line.
 8 We heard about the traffic. I will point out
 9 that there are 234 parking spaces that all exit on
 10 Asheville. Everything from the garage, everything from
 11 this parking lot here, and this parking lot.
 12 Now I want to turn to the big one, literally.
 13 We'll hear a lot more about this, I'm sure. One of the
 14 things that we've heard about this is that there will
 15 be a two-floor underground garage. Well, I beg to
 16 differ on this. This is actually Asheville Road here,
 17 and the natural slope of Asheville Road allows them to
 18 put an upper level and a lower level that are at the
 19 level of Asheville Road. So when they talk about
 20 underground garage, you can see here, what they're
 21 planning on doing quite clearly is dynamiting and
 22 excavating the puddingstone to get down to the level of
 23 Asheville Road. So this is not exactly underground.
 24 There's no ramps leading downward from Asheville Road.

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1 This is level in all of their plans. So this is the
 2 second level, and the first level would be here.
 3 How big is this? Well, it's 10 feet each for
 4 each level of the parking garage and then 10 and a half
 5 feet for each residential level and then, of course,
 6 the roof. And I don't know how big this is going to
 7 be. It's not stated in the plans. So this is at least
 8 seven feet high. It's actually higher if you count
 9 Asheville Road here because there is a step down to
 10 Asheville Road.
 11 There are a lot of very confusing statements
 12 in zoning bylaws about building lots and building
 13 height but very simply, for a building that's on a lot
 14 greater than 160 feet by 160 feet, it says to take the
 15 mean grade of ground continuous to the building. If
 16 that's greater than 10 feet, you are allowed to go 10
 17 feet above the street level as your reference height.
 18 So you measure from the top of the buildings to 10 feet
 19 above the road which, in this case, is Asheville road.
 20 So how high is this seven-foot building?
 21 Remember this is M0.5 zoning, maximum height 35 feet.
 22 By my calculations and by any reasonable standard of
 23 the zone bylaws, it's 60 feet high.
 24 So in summary, I think there are multiple

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1 violations of the zoning bylaws. I think that they
 2 tried to avoid the zoning regulations by calling a road
 3 a driveway, but they ignored the relevant sections of
 4 the bylaws. We see that there are 234 parking spaces,
 5 one exit, and they will say that a seven-foot building
 6 is less than 35 feet high. Okay?
 7 So let me tell you the conclusion of my
 8 story. In 1996 I was denied a permit for the attic
 9 renovation, okay? And so with the help of several of
 10 the people in this room, we went to the Town and we
 11 asked for an amendment to the bylaws that would allow
 12 us to build an attic renovation and this was passed and
 13 the bylaws were so amended to allow an attic renovation
 14 if there was no exterior changes to the design of the
 15 building. I went through the system. I followed the
 16 rules. The rules appeared to be inconsistent,
 17 incomplete. We came to the Town, we asked for the Town
 18 to change them. Please, apply the same standards to
 19 this project. Thank you.
 20 MR. COPPINGER: Good evening. My name is Ed
 21 Coppinger. I'm the state representative from West
 22 Roxbury and South Brookline. Two-thirds of my district
 23 is Boston, one-third is Brookline. On the Boston side
 24 of the district, I try not to get involved in zoning

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1 issues because there's a Boston City Council. But on
 2 the Brookline side, I knew I would eventually get
 3 involved in this issue because when I first ran for
 4 office in 2010, this was the biggest issue that
 5 affected South Brookline. And here we are four years
 6 later and this remains true.
 7 I'm concerned over a few issues related to
 8 this development. First, it doesn't appear that the
 9 developer listened to community input for specialized
 10 development. It seems that Chestnut Hill Realty has a
 11 vision in mind of what they want to do and they're
 12 going to extreme measures to accomplish that. When in
 13 1989 the same developer tried to develop property on
 14 the Boston side, a Boston Globe article said, "Zuker
 15 said he was told by the Boston Redevelopment Authority
 16 that he was out of touch with the neighborhood and has
 17 lost its trust. 'They thought I was trying to push
 18 something down their throats,' Zuker said."
 19 And here we are, 25 years later, at it again
 20 and the debate and the failings are still the same.
 21 Another one of my concerns is with the agency
 22 that has approved this development. I am trying to get
 23 answers for why they were all set to deny this original
 24 proposal last February and then suddenly the developer

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1 withdrew the plans, made subtle changes, and
 2 resubmitted. And within a short amount of time, a
 3 proposal that seemed all but dead was approved. If I
 4 cannot get appropriate answers, I will ask another
 5 state agency such as the Attorney General's Office, to
 6 investigate this for me.
 7 The Town of Brookline has worked diligently to
 8 have reached their affordable housing target. I think
 9 everyone in this room believes in the need for
 10 affordable housing. However, this site is not best
 11 suited. The efforts of most affordable housing sites
 12 as of late are centered in the areas of adequate public
 13 transportation. We all agree that public
 14 transportation in this part of town is less than
 15 adequate. And, in fact, last year we had to fight to
 16 make sure that the MBTA did not cut the one bus line
 17 that we have for this area.
 18 I feel that this proposal exploits the 40B
 19 statute. The proposal before us will change the scope
 20 and character of the neighborhood, and I ask that you
 21 oppose and deny this proposal before you.
 22 Thank you.
 23 MS. DALY: Hi. I'm Nancy Daly, a member of
 24 the Board of Selectmen, and I was chairman of the

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1 Hancock Village Study Committee that you heard about
 2 earlier.
 3 And I want to say, we did offer, as Scott
 4 said, a number of suggestions but there was one
 5 consistent theme throughout in which we repeatedly
 6 said -- and the neighbors said -- don't put all the
 7 building in the buffer zone. And I feel that this
 8 project not only certainly disregarded the neighborhood
 9 wishes, but I think by putting it in the buffer zone,
 10 there are some serious concerns.
 11 You heard, from Mr. Verrill, the hydrology
 12 issues. I read his little paper that he wrote, and I
 13 thought it was very good because I had been
 14 concerned -- we had heard, in the course of looking at
 15 this on our committee, how many of the neighbors
 16 already get flooding in their basements. This
 17 proposal, which is going to build up the land on the
 18 Hancock Village side with building almost out to the
 19 edge of their property line, is, I think, guaranteed to
 20 make that situation much worse. And while you do have
 21 certain leeway on a 40B proposal, you're not allowed to
 22 damage your neighbors' property.
 23 The second concern is also the runoff into the
 24 Hoar Sanctuary which is -- as you heard, there's

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1 already runoff from the property into the Hoar
 2 Sanctuary. Having many more cars, oil dripping,
 3 gasoline, et cetera, and surface area that -- I think
 4 that Mr. Verrill very eloquently said is likely to
 5 become impervious, even if it starts out as a porous
 6 surface, very quickly. It's going to make runoff in
 7 the Hoar Sanctuary as well as onto the neighbors'
 8 property much, much worse.
 9 This site is the opposite of smart growth
 10 development. As you just heard from Representative
 11 Coppinger, the one bus has been under some peril from
 12 the MBTA. But we have heard even when that bus is
 13 functioning that it's not really a great source of
 14 public transportation.
 15 I think the many, many units proposed, in
 16 particular the very large units which are going to have
 17 families most likely with two cars, are going to need a
 18 great deal of traffic pressure in this area where you
 19 have a lot of school children who already have a lot of
 20 traffic issues. That's also a great concern to me.
 21 I also think that by putting so much of this
 22 development right up within this buffer zone area that
 23 the -- you have the most traumatic decline in the kind
 24 of interface between the neighborhood and Hancock

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1 Village in terms of the suburban residential character
 2 of the surrounding neighborhood and what's at Hancock
 3 Village.
 4 So I think this proposal is not a good one,
 5 and I would urge you to deny it. I will say that all
 6 the members of the Board of Selectmen have very serious
 7 concerns about this.
 8 Thank you.
 9 MS. JONAS: Hi. I'm Louisa Jonas, and I'm a
 10 town meeting member from Precinct 16. I largely want
 11 to address three issues that were discussed at the
 12 Planning Board meeting. The first was kind of a
 13 general assumption that seemed to be agreed to by both
 14 the Planning Board and by the Chestnut Hill Realty
 15 representative that it even made sense to do an
 16 additional 40B on this already fully developed site.
 17 I think, as we probably all know, Hancock
 18 Village is already the largest development ever built
 19 in the history of Brookline with 530 units in Brookline
 20 and an additional 253 units in West Roxbury for a total
 21 of 789 units. The population in Brookline alone
 22 comprises 1,500 individuals and that comprises
 23 approximately 3 percent of the town's total
 24 population. It's also about a third of the total

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1 Precinct 16 population and contributes anywhere from 33
 2 to 40 percent of the Baker School population and
 3 according to statistics that Preserve Brookline
 4 collected, 50 percent of the school population at the
 5 younger grades.
 6 Looking at the density of the housing, there's
 7 530 units, 50 acres. That's about 10 and a half units
 8 per acre. The neighboring homes, which are on
 9 relatively small lots, 5,000 to 8,000 square feet, have
 10 a density about -- I estimated six and a half units per
 11 acre. So the housing complex already, as it exists, is
 12 considerably more dense than the neighboring homes.
 13 The Residences at South Brookline, if incorporated into
 14 the total Hancock Village site, results in a density of
 15 14 and a half units per site. This is much denser than
 16 the neighboring homes and it's also significantly
 17 denser, obviously, than the Hancock Village site by
 18 two -- or 50 percent. Sorry. Yeah. It's 192 units
 19 divided by 9.3 acres, so that comes to 20 units an
 20 acre, three or four times the density of the
 21 surrounding neighborhoods.
 22 I read an article on 40B in Shelterforce,
 23 which are all about affordable housing, and they
 24 analyzed a 40B in Walpole which the author said is the

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1 largest 40B development they even looked at and it only
 2 had 300 units on a 42-acre site. So that results in a
 3 density of 7 units per acre, which is almost exactly
 4 the density of our neighborhood, not even of Hancock
 5 Village. So it really puzzles me why having a density
 6 of 10 and a half units with a third of the Precinct 16
 7 population is not sufficient for that site.
 8 Second, I'd like to address the comment of
 9 Attorney Schwartz at that meeting when he represented
 10 Chestnut Hill Realty. He stated that CHR was forced to
 11 file a 40B application. He never said why, but one
 12 must assume it was because the Town did not agree to
 13 change its zoning to allow Chestnut Hill Realty to
 14 build the desired 460 units on the site.
 15 I want to do an analogy, a kind of inverse of
 16 what Mr. Abner said, to show how unthinkable this is.
 17 I own property, a single-family house. When I
 18 purchased the property, I knew it was on single-family
 19 housing. I now decided that I think it would be more
 20 profitable for me if I build a grocery store on that
 21 site. I go before the Town and I say, please Town,
 22 could you please rezone my property for commercial so
 23 that I can build my store? But I don't, I'm going to
 24 do a 40B application and build a four-story multiunit

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1 building on my site. And I feel that's exactly what
 2 happened here.
 3 None of you were at the original meeting that
 4 Mr. Zuker and Mr. Geller had with the neighborhood at
 5 the Baker School auditorium. They made a presentation
 6 and they told us they could build 500 units on the
 7 Hancock Village property as of right. However, they
 8 wanted certain configurations and if the neighborhood
 9 did not go along with those configurations, they would
 10 build on the green belt and they would possibly also
 11 file a 40B.
 12 Well, the neighbors didn't think it was such a
 13 great deal. They also realized that they couldn't
 14 build 500 units as of right. The Town felt the same,
 15 and here we are with our 40B application.
 16 So, yes. If Attorney Schwartz's statement
 17 that they were forced to file a 40B application was
 18 because neither the Town nor the neighborhood were
 19 willing to override their own best interest for the
 20 interest of a single property owner, then that's the
 21 case. And, again, I think that just because a property
 22 owner is larger, more powerful, and has political
 23 connections, their ludicrous proposal should not be
 24 treated any more differently than if I were to ask to

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1 have my single-family home rezoned commercial.
 2 The issue from the Planning Board meeting that
 3 I would like to address is the Planning Board's
 4 puzzlement as to why Chestnut Hill Realty has proposed
 5 to build on the green belt and the elevated
 6 puddingstone given the high cost. They kept saying,
 7 this is so expensive. Why do you want to do it there?
 8 Chestnut Hill Realty never provided any reason
 9 for this but simply stated that the two locations are
 10 the site of the 40B and that's that, regardless of the
 11 facts that the same owner owns both sites in whatever
 12 different corporate entities.
 13 So I have several suggestions as to why this
 14 high of a price here. First, Chestnut Hill Realty has
 15 wanted to build parking on the green belt for years,
 16 but they're aware of the history of the Zoning Board of
 17 Appeals denials of parking lots on that site. Twice
 18 owners have tried to get parking there and the Zoning
 19 Board of Appeals has denied the parking there.
 20 Second, as noted above, building on the green
 21 belt is seen as a threat -- was given as a threat to
 22 the neighbors in 2010 and is now being carried out.
 23 Finally, a town cannot modify a 40B project to
 24 the extent that it becomes uneconomic for the developer

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1 to build. So from CHR's perspective, it would make
 2 sense to place the building's location where it would
 3 be costly to build and argue that no change of the
 4 location can be made because the site is already
 5 designated. But this is patently absurd given that all
 6 Hancock Village has the same ownership, essentially,
 7 with the corporate veil here.
 8 I know the 1946 agreement was already
 9 discussed, but I just want to very briefly go through
 10 the three main arguments that have been made against
 11 the validity of the '46 agreements and why they don't
 12 hold water.
 13 First of all, the need for recording the
 14 agreement. Yes, the agreement was not recorded and
 15 recording -- the recording of an agreement or a
 16 contract or any kind of deed is needed to provide
 17 notice of successor owners but there is no need to have
 18 a recording vis-a-vis a specific successor owner if
 19 that specific owner has actual notice -- for the
 20 attorneys who are sitting up there.
 21 And CHR had a Planning Board meeting,
 22 acknowledged publicly that they had notice of the
 23 agreement at the time of the purchase of the property.
 24 So the requirement that recording was necessary doesn't

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1 hold water for this particular owner.
 2 Secondly, there's a 30-year limit. I think
 3 that's been gone over a lot with Jay Talerman. That's
 4 only relevant to private parties, especially with the
 5 newer cases that have just come out on this issue.
 6 And finally, with respect to a 40B, yes, it
 7 trumps specific zoning and while the Town did, in fact,
 8 rezone Hancock Village conditional upon the original
 9 owner making that written agreement, the Town never
 10 breached their part of the agreement, they've never
 11 changed the zoning to make it unfavorable for the
 12 owner, and the owner thus had no reason to breach -- it
 13 wouldn't be a breach if the owner no longer complied
 14 with the contract which is binding on the successor
 15 owner.
 16 And finally, I just want to mention that I
 17 think I agree somewhat with Scott. I think that a
 18 developer who hasn't been overreaching, who had come to
 19 the neighborhood and made a presentation for a
 20 reasonable development would have flown through the
 21 process, especially if it were beneficial to all
 22 parties.
 23 We have two eyesores at Hancock Village and
 24 they're the garages, one on Independence and one on --

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1 I think it's Gerry Road. They're incredibly ugly for
 2 everyone. And if they had proposed to renovate those
 3 garages and put them in the same design style and the
 4 rest of Hancock Village, which would also meet the
 5 requirements of the NCD, and especially if they had
 6 made it elderly housing so there wouldn't be more of a
 7 concern with flooding Baker School which already has so
 8 many students from that development, I think that would
 9 have been a win-win for everybody. And the problem is
 10 when you have an overreaching developer who feels that
 11 his political power can override any considerations of
 12 the neighborhood that you get into trouble like this.
 13 Thank you very much.
 14 MS. LEICHTNER: Hi. My name is Judi
 15 Leichtner. I live at 121 Beverly Road, and I'm a town
 16 meeting member from Precinct 16.
 17 Deb Dong who is a neighbor on Beverly and is
 18 an abutter -- I am not an abutter of the property --
 19 has written a letter. I think you may have received it
 20 already. She asked me to read it publicly. I'm going
 21 to, now, cut down part of her letter because many of
 22 those points have already been covered. But I do, on
 23 her behalf, want to thank you for giving the public an
 24 opportunity to voice their concerns.

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1 And as she says, "My intention is to provide
 2 certain information and perspective that may not be
 3 readily available from the town commissions and other
 4 residents. I've been a resident of Beverly Road for
 5 over 13 years, and my house directly abuts Hancock
 6 Village and the green belt on which many of the
 7 proposed buildings would be sited. My husband and I
 8 are also among the co-plaintiffs with the Town in a
 9 recent lawsuit against MassDevelopment and the
 10 developer, and I'm also a member of the Town's public
 11 transportation advisory committee, although I write
 12 just as a member of the public.
 13 "First, the information about the developer's
 14 stated reasons for withdrawal of its previous 40B
 15 application: They stated to the ZBA and made
 16 statements to the public and the press that it withdrew
 17 its prior 40B application to make changes to its
 18 proposal in a response to the community concerns.
 19 "However, at the November 25, 2013 court
 20 appearance for the lawsuit which I, Deb, attended as an
 21 observer, the developer's attorney, in answering the
 22 judge's question about the reasons for the withdrawal
 23 on their application stated the following:
 24 "1. The developer was anxious to proceed as

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1 quickly as possible with the development plan for the
 2 original 40B proposal and repeatedly calling
 3 MassDevelopment for approval.
 4 "2. MassDevelopment responded they were
 5 uneasy with the application and indicated it was not
 6 going to be approved.
 7 "3. The developer asked for the reasons why
 8 and wanted a meeting. MassDevelopment responded that
 9 it could meet with the developer, but only if they
 10 withdrew the application.
 11 "4. The developer then withdrew its
 12 application, a meeting was promptly held in which
 13 MassDevelopment expressed its reservations including
 14 the massing and short setback.
 15 "And 5. The developer then revised its
 16 proposal, apparently in response to MassDevelopment's
 17 input, and submitted the new application which, as you
 18 know, was approved.
 19 "In other words, the withdrawal and new
 20 application was a response to MassDevelopment's
 21 expected denial of the original 40B application, and
 22 not in response to the public's stated concerns.
 23 "Less of the reasons for the withdrawal and
 24 new submissions are germane to the substance of the

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1 development plan. I point out the difference in the
 2 developer's attorney's recitation of what happened to
 3 the judge compared to the developer's public statements
 4 highlight just one example out of many with the
 5 developer attempting to portray its interactions with
 6 the community in a far more positive way than has been
 7 our experience.
 8 "In truth, the developer has been unresponsive
 9 to public input and the input of the various town
 10 committees and boards that has met and provided
 11 suggestions and feedback over the past five years."
 12 She also speaks about the tactics of
 13 MassDevelopment. "In a December 2, 2013 letter from
 14 MassDevelopment's attorney, Benjamin Tymann, to acting
 15 Town Counsel Joslin Murphy and to Jason Talerman,
 16 attorney for the residents in the lawsuit, Attorney
 17 Tymann stated his intent to seek payment of legal fees
 18 against not only the Town, but against each of the
 19 individuals named as plaintiffs unless the lawsuit was
 20 withdrawn by noon of December 4th, less than two days
 21 later. He even quoted an award of over \$78,000 as an
 22 example. This is clearly a high-handed bullying tactic
 23 intended to scare the residents from exercising their
 24 legal rights and is especially shameful because it

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1 comes from a state agency against residents of the
 2 Commonwealth.
 3 "While MassDevelopment should seek to promote
 4 the development of affordable housing in a neutral
 5 matter consistent with its regulations, its response to
 6 the prospect of any review of its failure to follow its
 7 own regulations shows that it will resort to
 8 inappropriate partisan tactics and I think it's
 9 important for the ZBA to be aware of these actions.
 10 Reasons for development in the green belt, she
 11 mentions "I have attended numerous meetings, including
 12 many for development proposals that predated the 40B
 13 proposal and CHR said that they want to place parking
 14 in the green belt near the existing units and it was of
 15 key importance to them. They even stated that even if
 16 no new units were built, they most wanted the new roads
 17 and parking. And I and many others believe that the
 18 purpose for locating units on the green belt is an
 19 attempt to justify parking spaces.
 20 Will Verrill spoke beautifully about the
 21 groundwater, but Deb, as an abutter, says the
 22 following:
 23 "Many areas of the green belt high on Beverly
 24 Road have a very high water table melting at standing

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1 water, and this is more pronounced in the portions
 2 closer to the Beverly Road property than in the areas
 3 closer to the existing Hancock Village apartments. Yet
 4 when the testing and boring were done on the green
 5 belt, tests for water issues last winter, from my
 6 observation, bores were drilled in the dryer areas and
 7 not where the standing water often is.
 8 "I'm certainly no hydrologist, geologist, or
 9 engineer. Perhaps there are technical reasons on the
 10 choice of location for testing, but it does raise
 11 questions in my mind, why it appears that only the
 12 drier portions were drilled. I therefore urge the ZBA
 13 to consider that a new independent analysis should be
 14 done on all portions of the green belt and not to rely
 15 on the peer review of an analysis already expounded by
 16 the development.
 17 "Nonetheless, the analysis done has clearly
 18 shown a water problem because they have regraded and
 19 are raising the ground level as high as seven feet
 20 higher in sections." And we have the letter that she
 21 wrote, not only to MassDevelopment, but to the Town.
 22 "I've also noticed the trench proposed to run
 23 along the property line is actually a bit lower than
 24 the current grade. Undoubtedly, this is intended to

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1 capture some of the water runoff, but it would also
 2 have the effect of creating new and deeper areas of
 3 standing water.
 4 "Also, this very snowy winter reminds me of
 5 the plowing, sanding, and oversalting of the roads
 6 during this season. While I'm #####
 7 will offer assurance that it's going to take the proper
 8 measures to manage this impermeable surface, I contend
 9 this will be an ongoing maintenance issue and I suggest
 10 that any new approval of plans for the development must
 11 not rely on such assurances but should instead assume a
 12 variance factor on such maintenance and service.
 13 "Also, the current mature trees help absorb
 14 much of the water currently in the green belt, and many
 15 will have to be eliminated. I understand that the
 16 trees earmarked to be removed were marked with yellow
 17 tape for ZBA's recent walk-through of the property.
 18 However, in my observation, the trees near my house, in
 19 comparison with the printed plans submitted by the
 20 developer, many trees in the footprint of the new
 21 buildings and paved areas were not marked with tape.
 22 Plus, I find it difficult to believe that other nearby
 23 trees would survive the construction process."
 24 As a member of the Public Transportation

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1 Board, she, again, mentioned the 51 route was proposed
 2 for elimination by the MBTA and was at a meeting
 3 recently with them where they were investigating ways
 4 to increase and improve public transportation
 5 throughout Brookline, including the Hancock Village.
 6 The MBTA stated that although the 51 route is no longer
 7 currently being considered for elimination, there are
 8 absolutely no funds and no plans whatsoever to increase
 9 the service in South Brookline and that even if funds
 10 should become available, there are numerous other MBTA
 11 routes with priority for any increased service.
 12 So she said, "I believe more residents will
 13 likely be relying on cars, taxis, or delivery services
 14 in order to get groceries which are not anywhere in the
 15 area."
 16 Her final comment, "The developer has also
 17 tried to taint the neighbors around Hancock Village
 18 with the taint of NIMBY-ism. This is an unwarranted
 19 and untrue statement. Hancock Village, as I've said,
 20 was originally built as affordable housing for
 21 returning World War II veterans and remained affordable
 22 for several decades but it was the current developer
 23 who took active steps to remove those units from the
 24 affordable housing stock when Massachusetts law

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1 changed. While I'm not questioning the legality of the
 2 developer's right to do so, I find it ironic that the
 3 very developer who converted over 500 units of
 4 affordable housing to market rate is asserting that
 5 it's the neighbors who are against affordable housing.
 6 "Many of my neighbors moved here when Hancock
 7 Village was affordable housing, including my parents
 8 who moved to South Brookline 30 years ago. I moved
 9 back here in 2000 and believed at that time that
 10 Hancock Village was still affordable and senior housing
 11 and was chagrined to learn afterwards that it had all
 12 been converted to market rate.
 13 "I would personally be pleased to see more
 14 affordable housing in South Brookline and would
 15 encourage the developers to convert some of the current
 16 units back to affordable housing and find better and
 17 more appropriate ways to add 39 units of affordable
 18 housing than the actual affordable housing units being
 19 proposed without the huge negative impacts from this
 20 current proposal, that it's far too large, sited in
 21 inappropriate places, that would aggregate the historic
 22 homestead garden city plan of Hancock Village, and that
 23 would irrevocably create far too many problems for
 24 Brookline and its residents."

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1 And I agreed to read this letter because I
 2 agree with everything that Deb had to say.
 3 Thank you very much.
 4 MS. KOOCHEER: Hello. My name is Robin
 5 Koocher, 285 Beverly Road. I'm an abutter.
 6 At the Planning Board meeting a few weeks ago,
 7 many of the members of that board questioned the reason
 8 for siting the building in this particular part of
 9 Hancock Village property. You've heard before, the
 10 concerns of residents and boards, which you've read the
 11 letters of, in terms of the water issues creating
 12 pollution issues. Members of the Planning Board
 13 mentioned that the huge destruction of the puddingstone
 14 that would be necessary also makes it an expensive part
 15 of the property for this project. Many of the
 16 neighbors, of course, agree with that.
 17 The following quote from the minutes of the
 18 June 23, 2009 Conservation Committee meeting may
 19 contain an answer to that question. This is a quote.
 20 "R. Schnoor noted that the Conservation
 21 Commission also chairs the open space plan, and in
 22 light of this and the goals of the developer, she asked
 23 how they planned to balance increasing density with the
 24 special aspects of the site. Ed Zucker, owner of

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1 Chestnut Hill Realty, discussed the need to provide
 2 more parking options as a major priority."
 3 You've heard about what happened over the last
 4 five years. I will skip over that. But, again,
 5 Chestnut Hill Realty chooses to submit another plan
 6 that, again, destroys the open space. And why?
 7 Exactly what Mr. Zucker stated truthfully at that
 8 Conservation Commission hearing, which is they need
 9 more parking spaces and they need a road.
 10 At the end of the meeting, it concluded with
 11 Joe Geller concluding by reiterating that they were not
 12 seeking to increase density beyond what is allowed and
 13 that they plan to put something in place that makes the
 14 most sense for the open space. And that's a closed
 15 quote.
 16 This plan makes absolutely no sense for the
 17 open space and the original plan which created it. It
 18 is a total misuse of the 40B project. And I served as
 19 a member of the Hancock Village Planning Committee
 20 along with Scott Gladstone, Nancy Daly was our chair
 21 and, in fact, at one of those meetings it was stated by
 22 representative, Chestnut Hill Realty, that if we don't
 23 build one more unit of housing, we need a road and we
 24 need parking for the units which face the green space

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1 because they're the ones who are the furthest away and
 2 those are the apartments that are the hardest to rent.
 3 Thank you.
 4 MR. GELLER: Anybody else?
 5 (No response.)
 6 Any questions from the Board?
 7 (No response.)
 8 I want to thank everyone for participating
 9 tonight and for your very helpful comments. The Board
 10 will obviously consider them as a part of these ongoing
 11 hearings and the ongoing testimony.
 12 Mr. Hussey?
 13 MR. HUSSEY: Are you going to entertain a
 14 motion to submit this package to the Mass Historic
 15 Commission?
 16 MR. GELLER: What I would like to do is I'd
 17 like to ask our counsel to look into that question and
 18 respond at the next hearing before we make that
 19 motion. Okay?
 20 MR. HUSSEY: That's fine.
 21 MR. GELLER: It seems to me that -- it's kind
 22 of romantic back there, but it looks like it's 20
 23 minutes of 10:00. I think it would make sense to break
 24 for the -- at this point the -- Mr. Schwartz, did you

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1 anticipate responding or are you going to hold off
 2 until after we hear some of the testimony from town
 3 boards and agencies?
 4 MR. SCHWARTZ: Whatever your plan is. I have
 5 a few comments I can make very briefly, but I'm happy
 6 also to wait in the interest of everybody's time if you
 7 prefer for us to wait until after, so either way.
 8 MR. GELLER: Yeah. I think -- why don't we
 9 hear the general comments from town boards and
 10 agencies, and I think that's a natural point to hear
 11 some responses, and then we'll have the ability to
 12 break into the three critical topics from there, and
 13 you would have an opportunity to respond as to those
 14 specific issues at that point. Okay?
 15 So our next scheduled hearing is March 5th at
 16 7:00, and at that point we will hear global comments,
 17 general comments from the town boards and agencies.
 18 However, we will obviously -- I think the intention is
 19 that specific to the issues of drainage, design, and
 20 traffic -- I think what we're going to try and do is
 21 consolidate those boards and agencies that have
 22 comments and have oversight over those specific topics
 23 for those specific meetings. Again, this will be an
 24 opportunity for the town boards and agencies to

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1 generally speak about the project outside of the three
 2 identified topics.
 3 So this hearing will be continued until March
 4 5th. Thank you, everyone.
 5 (Proceedings suspended at 9:42 p.m.)
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1 CERTIFICATE
 2
 3
 4 I, Kristen C. Krakofsky, Court Reporter and
 5 Notary Public in and for the Commonwealth of
 6 Massachusetts, certify:
 7 That the foregoing proceedings were taken
 8 before me at the time and place herein set forth and
 9 that the foregoing is a true and correct transcript of
 10 my shorthand notes so taken.
 11 Dated this 6th day of March, 2014.
 12
 13
 14
 15 _____
 16 Kristen Krakofsky, Notary Public
 17 My commission expires November 3, 2017.
 18
 19
 20
 21
 22
 23
 24

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